

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
Region 2

In the matter of:

Caribbean All Metal Recyclers Corp.,

Respondent.

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

COMPLAINT, COMPLIANCE ORDER  
AND NOTICE OF OPPORTUNITY  
FOR HEARING

Docket No. RCRA-02-2016-7103

U.S. Environmental  
Protection Agency-Region 2  
2016 OCT -4 AM 11:10  
REGIONAL HEARING  
ORDER

**COMPLAINT**

Complainant, on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), by and through her attorneys, hereby alleges as and for her Complaint against Respondent:

**Jurisdiction**

1. This administrative proceeding is commenced pursuant to the provisions of the Solid Waste Disposal Act, as amended by, *inter alia*, the Resource Conservation and Recovery Act and the Hazardous and Solid Waste Amendments of 1984, codified at 42 U.S.C. §§ 6901-6991m (collectively, the "Act" or "RCRA"), for the assessment of a civil penalty and for injunctive relief for Respondent's failure to have complied with requirements mandated pursuant to RCRA.
2. This tribunal is vested with jurisdiction over this proceeding pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), and 40 C.F.R. § 22.1(a)(4).
3. Complainant in this proceeding is the Director of the Division of Enforcement and Compliance Assistance of EPA, Region 2.
4. Complainant has been duly delegated the authority to institute this proceeding.

**Applicable Legal Provisions, Generally**

5. RCRA establishes a comprehensive federal regulatory program for the handling and management of, *inter alia*, solid waste and hazardous waste. 42 U.S.C. § 6901 *et seq.*

6. Pursuant to Sections 3002(a) and 3004(a) of RCRA, 42 U.S.C. §§ 6922(a) and 6924(a), respectively, the Administrator of EPA has promulgated regulations, codified at 40 C.F.R. Parts 260 through 266 and Parts 268, 270, 273 and 279, for the handling and management of hazardous waste that provide, *inter alia*, requirements for the generating, transporting, exporting, treating, storing and disposing of hazardous waste.
7. 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....”
8. A violation of a requirement set forth in any of the aforementioned (§ 6, above) regulations 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).
9. Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), provides, in relevant part, that “[a]ny penalty assessed in the order [issued under Section 3008(a)(1) of RCRA] shall not exceed \$25,000 per day of noncompliance for each violation of a requirement of this subchapter [Subchapter III of the Act, 42 U.S.C. §§ 6921-6939e].”
10. Under authority of the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended through 2015, EPA has promulgated regulations, codified at 40 C.F.R. Part 19, that, *inter alia*, increase the maximum penalty EPA might obtain pursuant to Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), to \$37,500 for any violation occurring on or after January 12, 2009, and to \$93,750 for any violation occurring after November 2, 2015.

#### **Respondent’s Identity and Operations, Generally**

11. Respondent is Caribbean All Metal Recyclers Corp.
12. Respondent is a corporation organized under, and existing since 2008, under the laws of the Commonwealth of Puerto Rico.
13. Respondent is, and has been since 2008, a “person” within the meaning of Section 1004(15) of the Act, 42 U.S.C. § 6903(15), and 40 C.F.R. § 260.10.
14. Since about 2008, Respondent has owned a facility located at Carr. 848, Km. 2.9, San Anton Ward, in Carolina, Puerto Rico (zip code 00978) (hereinafter, “Respondent’s facility”).
15. Since about 2008, Respondent has operated Respondent’s facility.
16. Respondent has been since about 2008, and continues to be, the “owner” of Respondent’s facility within the meaning of 40 C.F.R. § 260.10.



17. Respondent has been since about 2008, and continues to be, the “operator” of Respondent’s facility within the meaning of 40 C.F.R. § 260.10.
18. Respondent’s facility constitutes: (a) a “facility” within the meaning of 40 C.F.R. § 260.10, and (b) a “new facility” within the meaning of 40 C.F.R. § 260.10.

### **Respondent’s Business Operations**

19. At Respondent’s facility, Respondent has been since 2008, and still is, engaged in the commercial recycling business, which includes scrap metal recycling.
20. As part of Respondent’s business operations, Respondent has collected and stored (and continues to collect and store) spent lead acid batteries at Respondent’s facility.
21. The spent lead acid batteries Respondent collects and stores 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.
22. The spent lead acid batteries Respondent collects and stores constitute “hazardous waste” within the meaning of Section 1004(5) of RCRA, 42 U.S.C. § 6903(5), and 40 C.F.R. § 261.3.
23. Respondent collects and stores the aforementioned (¶ 20, above) spent lead acid batteries for export to foreign countries for reclamation in such countries.
24. As a consequence of Respondent’s aforementioned (¶ 23, above) export of the spent lead acid batteries, Respondent is subject to the provisions of item number “6” in the table set forth in 40 C.F.R. § 266.80(a).

### **Respondent’s Interactions with EPA**

25. In 2010, 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.
26. 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.
27. On or about July 10, 2015, a duly designated representative of EPA conducted a follow-up inspection under authority of Section 3007 of RCRA, 42 U.S.C. § 6927, of Respondent’s facility.
28. EPA, pursuant to the authority granted it under Section 3007 of RCRA, 42 U.S.C. § 6927, on or about May 6, 2016 sent Respondent an information request letter (IRL) to ascertain whether Respondent’s exports of spent lead acid batteries complied with applicable RCRA requirements.

29. On or about June 10, 2016, Respondent replied to EPA's IRL.

**COUNT 1: UNLAWFUL EXPORT OF HAZARDOUS WASTE TO CHINA**

30. Complainant repeats and reallages each allegation contained in paragraphs "1" through "29" with the same force and effect as if fully set forth herein.
31. 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."
32. Forty C.F.R. § 262.52 provides 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 [40 C.F.R.] § 262.53 has been provided;
  - (b) The receiving country has consented to accept the hazardous waste;
  - (c) A copy of the EPA Acknowledgment of Consent to the shipment accompanies the hazardous waste shipment and, unless exported by rail, is attached to the manifest (or shipping paper for exports by water (bulk shipments));
  - (d) The hazardous waste shipment conforms to the terms of the receiving country's written consent as reflected in the EPA Acknowledgment of Consent."
33. 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."
34. The required notification of intent to export must be submitted to EPA's Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division (2254A) in Washington, DC.
35. In June 2015, Respondent exported through the port of San Juan, Puerto Rico, seven shipments of spent lead acid batteries to China.
36. As indicated in 40 C.F.R. § 262.58(a)(1), China is not a member nation of the OECD.



37. Respondent exported the aforementioned (¶35, above) spent lead acid batteries for reclamation.
38. The aforementioned (¶35, above) export of spent lead acid batteries occurred without Respondent (or a third party acting on behalf of Respondent) having provided the notification required by 40 C.F.R. §§ 262.52(a) and 266.80.
39. The aforementioned (¶35, above) export of spent lead acid batteries occurred without Respondent (or a third party acting on behalf of Respondent) 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.
40. 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) having been provided, as referenced in paragraph 38, above, Respondent's export of the seven shipments of spent lead acid batteries to China was prohibited pursuant to 40 C.F.R. § 262.52(a).
41. As a consequence of Respondent's export of spent lead acid batteries to China without the EPA Acknowledgment of Consent notification as required by 40 C.F.R. § 262.52(c) having been provided, as referenced in paragraph 39, above, Respondent's export of the seven shipments of spent lead acid batteries to China was prohibited pursuant to 40 C.F.R. § 262.52(c).
42. The aforementioned (¶38, above) failure to provide the notification as required by 40 C.F.R. §§ 262.52(a) and 266.80 constitutes a violation of said provisions.
43. The aforementioned (¶39, above) failure to have 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 constitutes a violation of said provisions.
44. Respondent was required to comply with the requirements applicable to a "primary exporter" in order lawfully to export the aforementioned (¶ 35, above) spent lead acid batteries to China.
45. Respondent exported the aforementioned (¶ 35, above) spent lead acid batteries without the notification to EPA as required pursuant to 40 C.F.R. §§ 262.53 and 266.80 having been provided by Respondent or a third party acting on behalf of Respondent.
46. As a consequence of the aforementioned (¶45, above) failure to provide the requisite notification, 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.
47. The aforementioned (¶45, above) failure constitutes a violation of each of: (a) 40 C.F.R. § 262.53, and (b) 40 C.F.R. § 266.80, which incorporates the substantive obligations set out in 40 C.F.R. § 262.53.



48. 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; and (d) 40 C.F.R. § 266.80.

**COUNT 2: UNLAWFUL EXPORT OF HAZARDOUS WASTE TO KOREA**

49. Complainant repeats and reallages each allegation contained in paragraphs “1” through “29” with the same force and effect as if fully set forth herein.
50. 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.
51. 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 the waste:
- (1) Meets the federal definition of hazardous waste under 40 C.F.R. §261.3; and
  - (2) Is subject to either the Federal RCRA manifesting requirements at 40 CFR part 262, subpart B, the universal waste management standards of 40 CFR part 273, State requirements analogous to 40 CFR part 273, the export requirements in the spent lead acid battery management standards of 40 CFR part 266, subpart G, or State requirements analogous to the export requirements in 40 CFR part 266, subpart G.
52. The regulation codified at 40 C.F.R. § 262.82(a)(2)(i) states, “Amber wastes that are considered hazardous under U.S. national procedures as defined in [40 C.F.R.] § 262.80(a) are subject to the Amber control procedures set forth in this subpart.”
53. In relevant part, 40 C.F.R. § 262.83(b) states, “Exports of hazardous waste from the United States as described in [40 C.F.R.] § 262.80(a) that are subject to the Amber control procedures are prohibited unless the notification...requirement[] of paragraph (b)(1) [is] met.”
54. 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, Office of Federal Activities, International Compliance Assurance Division (2254A)” in Washington, DC.
55. For purposes of 40 C.F.R. Part 262, Subpart H, 40 C.F.R. § 262.81 defines exporter to “mean[] the person under the jurisdiction of the country of export who has, or will have at the time the planned transboundary movement commences, possession or other form of legal control of the wastes and who proposes transboundary movement of the hazardous wastes for



the ultimate purpose of submitting them to recovery operations. When the United States (U.S.) is the country of export, *exporter* is interpreted to mean a person domiciled in the United States” (emphasis in original).

56. 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).
57. Respondent exported the aforementioned (¶ 56, above) spent lead acid batteries for recovery operations (*i.e.* for reclamation).
58. Spent lead acid batteries are described in 40 C.F.R. § 262.80(a).
59. The Republic of Korea (South Korea) is listed in 40 C.F.R. § 262.58(a)(1) as a designated OECD member country.
60. Respondent is domiciled in the United States.
61. Respondent was the “exporter” of the aforementioned (¶ 56, above) spent lead acid batteries exported to the Republic of Korea within the meaning of 40 C.F.R. § 262.83(b)(1)(i).
62. Respondent exported the aforementioned (¶ 56, above) spent lead acid batteries without having provided (or having a third party provide such notification on behalf of Respondent) the notification to EPA required pursuant to 40 C.F.R. § 262.83(b)(1)(i).
63. As a consequence of the aforementioned (¶ 62, above) failure to provide the requisite notification, Respondent’s export of the 23 shipments of spent lead acid batteries to the Republic of Korea was prohibited pursuant to: (a) 40 C.F.R. § 262.83(b), and (b) 40 C.F.R. § 266.80(a), which incorporates by reference 40 C.F.R. § 262.83.
64. The aforementioned (¶ 62, above) failure constitutes a violation of each of (a) 40 C.F.R. § 262.83, and (b) 40 C.F.R. § 266.80, which incorporates by reference 40 C.F.R. § 262.83.
65. Each of 40 C.F.R. § 262.83 and 40 C.F.R. § 266.80 constitutes a requirement of Subchapter III of the Act, 42 U.S.C. §§ 6921-6939e.

## **II. PROPOSED CIVIL PENALTY**

Complainant proposes, subject to the receipt and evaluation of further relevant information, that Respondent be assessed the following civil penalty for the violations alleged in this Complaint:

Count 1:	\$14,111.00
Count 2:	\$16,339.00
<b>Total:</b>	<b>\$30,450.00</b>



**Total Proposed Penalty (Rounded to Nearest \$100): \$30,400.00**

The proposed civil penalty has been determined in accordance with Section 3008(a)(3) of the Act, 42 U.S.C. § 6928(a)(3). For purposes of determining the amount of any penalty assessed, Section 3008(a)(3) requires EPA to “take into account the seriousness of the violation and any good faith efforts to comply with applicable requirements.” To develop the proposed penalty in this Complaint, Complainant has taken into account the particular facts and specific circumstances of this case and has used the guidance found in EPA’s 2003 RCRA Civil Penalty Policy, a copy of which is available upon request or can be found on the Internet at the following address: <http://www2.epa.gov/sites/production/files/documents/rcpp2003-fnl.pdf>. This policy provides a rational, consistent and equitable calculation methodology to assist in applying the RCRA statutory penalty factors to particular cases.

The Federal Civil Penalties Inflation Adjustment Act of 1990, as amended through 2015 (“Inflation Adjustment Act”), 28 U.S.C. § 246, required EPA to adjust its penalties for inflation on a periodic basis. Consistent with this, the penalty amounts in the 2003 RCRA Civil Penalty Policy have been amended to reflect inflation adjustments. The adjustments were made pursuant to the December 29, 2008 document entitled “Amendments to EPA’s Civil Penalty Policies to Implement the 2008 Civil Penalty Monetary Penalty Inflation Adjustment Rule (effective January 12, 2009)”; the November 16, 2009 document entitled “Adjusted Penalty Policy Matrices based on the 2008 Civil Monetary Inflation Rule”; the December 6, 2013 document entitled “Amendments to the U.S. Environmental Protection Agency’s Civil Penalties Policies to Account for Inflation ( applicable to violations that occurred between December 7, 2013 and November 2, 2015)”; and the July 27, 2016 document entitled “Amendments to the U.S. Environmental Protection Agency’s Civil Penalty Policies to Account for Inflation ( applicable to violations that occurred after November 2, 2015).”

The penalty amounts in the 2003 RCRA Civil Penalty policy have been and will continue to be amended to reflect inflation adjustments. The adjustments to date have been made pursuant to the following: (a) the December 29, 2008 document entitled “Amendments to the EPA Civil Penalty Policies to Implement the 2008 Monetary Penalty Inflation Adjustment Rule (effective January 12, 2009)”; (b) the November 16, 2009 document entitled Adjustment Penalty Policy Matrices Based on the 2008 Civil Monetary Penalty Inflation Adjustment Rule”; and (c) the memorandum entitled “Amendments to the U.S. Environmental Protection Agency’s Civil Penalty Policies to Account for Inflation” (applicable to violations that occurred between December 7, 2013 and November 2, 2015); and the July 27, 2016 document entitled “Amendments to the U.S. Environmental Protection Agency’s Civil Penalty Policies to Account for Inflation” (applicable to violations that occurred after November 2, 2015).

Pursuant to the Inflation Adjustment Act, the maximum statutory civil penalty under Section 3008(a)(3) of the Act, 42 U.S.C. § 6928(a)(3), is \$37,500 per day for each violation occurring after January 12, 2009 through November 2, 2015, and \$93,750 per day for each violation occurring after November 2, 2015. See C.F.R. Part 19 and 81 *Fed. Reg.* 43,091 (July 1, 2016).

A penalty calculation worksheet and narrative explanation to support the penalty figure



for each violation cited in this Complaint are included in Attachment I, below. Matrices employed in the determination of individual and multi-day penalties are also included in Attachment II.

### **III. COMPLIANCE ORDER**

Based upon the foregoing, and pursuant to the authority given EPA under Section 3008(a)(1) of the Act, 42 U.S.C. § 6928(a)(1), Complainant herewith issues the following Compliance Order to Respondent:

- 1) Respondent shall, to the extent it has not already done so, immediately upon the effective date of this Order cease and desist the export of spent lead acid batteries (for reclamation) to countries that are not members of the OECD unless and until it has fully complied with the applicable regulations set forth in 40 C.F.R. Part 262, Subpart E (*i.e.* 40 C.F.R. §§ 262.50-.58), and 40 C.F.R. Part 266, Subpart G, and Respondent shall thereafter maintain such compliance.
- 2) With regard to the seven export shipments to China in June 2015 referenced in paragraphs 35 and 37 of the Complaint, above, Respondent shall, to the extent it has not previously done so, provide the notification required pursuant to 40 C.F.R. § 262.52.
- 3) Respondent shall, to the extent it has not already done so, immediately upon the effective date of this Order cease and desist the export of spent lead acid batteries (for reclamation) to countries that are member states of the OECD (as listed in 40 C.F.R. 262.58) unless and until it has fully complied with the applicable regulations set forth in 40 C.F.R. Part 262, Subpart H (*i.e.* 40 C.F.R. §§ 262.80-.89), and 40 C.F.R. Part 266, Subpart G, and Respondent shall thereafter maintain such compliance.
- 4) With regard to the 23 export shipments to the Republic of Korea in May and June 2015 referenced in paragraphs 56 and 57 of the Complaint, above, Respondent shall, to the extent it has not previously done so, provide the notification required pursuant to 40 C.F.R. § 262.83.
- 5) In addition to the notification requirements specified in paragraphs “1” through “4” of this Compliance Order, Respondent shall submit to EPA within sixty (60) calendar days of the effective date of this Compliance Order written notice of its compliance (accompanied by a copy of all appropriate supporting documentation) or noncompliance with the notification requirements set forth in paragraphs “1” though “4” of this Compliance Order. If Respondent is in noncompliance with a particular requirement, the notice shall state the reasons for noncompliance and shall provide a schedule for achieving prompt compliance with the applicable RCRA exporting requirement(s).
- 6) Respondent shall send the written notice it must provide pursuant to paragraph 5 of this Compliance Order to:



Sam Kerns, Environmental Engineer  
RCRA Compliance Branch  
Division of Enforcement and Compliance Assistance  
U.S. Environmental Protection Agency - Region 2  
290 Broadway, 21<sup>st</sup> Floor  
New York, New York 10007-1866  
kerns.sam@epa.gov

- 7) This Compliance Order shall take effect thirty (30) calendar days after service of this Order, unless by that date Respondent has requested a hearing pursuant to 40 C.F.R. § 22.15. *See* 42 U.S.C. § 6928(b) and 40 C.F.R. §§ 22.37(b) and 22.7.
- 8) Compliance with the provisions of this Compliance Order does not waive, extinguish, preempt or otherwise affect Respondent's obligation to comply with all applicable statutory or regulatory (federal and/or commonwealth) requirements, nor does such compliance release Respondent from liability for any RCRA violations. In addition, nothing herein waives, prejudices, invalidates or otherwise affects the authority of EPA (or the United States on behalf of EPA) to enforce against Respondent for any violation of any applicable RCRA requirement (including requirements related to the export of spent lead acid batteries), and to seek and obtain any appropriate remedy or sanction under RCRA or any other applicable law concerning Respondent's generation, export, transportation, treatment, storage and disposal of hazardous waste.

#### **IV. NOTICE OF LIABILITY FOR ADDITIONAL CIVIL PENALTIES**

Pursuant to the terms of Section 3008(c) of the Act, RCRA, 42 U.S.C. § 6928(c), and the Inflation Adjustment Act, a violator failing to take corrective action within the time specified in a compliance order is liable for a civil penalty of up to \$56,467 for each day of continued noncompliance. *See* 81 *Fed. Reg.* 43,091 (July 1, 2016; to be codified at 40 C.F.R. Part 19). Such continued non-compliance may also result in suspension or revocation of any permits EPA has issued to the violator.

#### **V. PROCEDURES GOVERNING THIS ADMINISTRATIVE LITIGATION**

The rules of procedure governing this civil administrative litigation have been set forth in the "CONSOLIDATED RULES OF PRACTICE GOVERNING THE ADMINISTRATIVE ASSESSMENTS OF CIVIL PENALTIES, ISSUANCE OF COMPLIANCE OR CORRECTIVE ACTION COMPLIANCE ORDERS, AND THE REVOCATION, TERMINATION OR SUSPENSION OF PERMITS." These rules are codified at 40 C.F.R. Part 22. A copy of these rules accompanies service of this Complaint.

Upon receipt of a compliance order issued under Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), Respondent may seek administrative review in accordance with 40 C.F.R. §§ 22.15 and 22.37(b). Respondent may seek judicial review of the compliance order pursuant to Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701 – 706, once it is final and reviewable



pursuant to Section 3008(b) of RCRA, 42 U.S.C. § 6928(b), and 40 C.F.R. §§ 22.31 and 22.37(b).

#### **A. Answering the Complaint**

Where Respondent intends to contest any material fact upon which the Complaint is based, to contend that the proposed penalty and/or the Compliance Order is inappropriate or to contend that Respondent is entitled to judgment as a matter of law, Respondent must file with the Regional Hearing Clerk of EPA, Region 2, both an original and one copy of a written answer(s) to the Complaint, and such Answer(s) must be filed within 30 calendar days after service of the Complaint. 40 C.F.R. §§ 22.15(a) and 22.7. The address of the Regional Hearing Clerk of EPA, Region 2, is:

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

(NOTE: any documents that are filed after the Answer has been filed should be filed as specified in "D" below.)

Respondent shall also then serve one copy of the Answer(s) to the Complaint upon Complainant and any other party to the action. 40 C.F.R. § 22.15(a).

Respondent's Answer(s) to the Complaint must clearly and directly admit, deny, or explain each of the factual allegations that are contained in the Complaint and with regard to which Respondent has any knowledge. 40 C.F.R. § 22.15(b). Where Respondent lacks knowledge of a particular factual allegation and so states in the Answer(s), the allegation is deemed denied. 40 C.F.R. § 22.15(b).

The Answer(s) shall also set forth: (1) the circumstances or arguments that are alleged to constitute the grounds of defense, (2) the facts that Respondent disputes (and thus intends to place at issue in the proceeding) and (3) whether Respondent requests a hearing. 40 C.F.R. § 22.15(b).

Respondent's failure affirmatively to raise in the Answer(s) facts that constitute or that might constitute the grounds of its defense may preclude Respondent at a subsequent stage in this proceeding, from raising such facts and/or from having such facts admitted into evidence at a hearing.

#### **B. Opportunity To Request A Hearing**

If requested by Respondent, a hearing upon the issues raised by the Complaint and Answer(s) may be held. 40 C.F.R. § 22.15(c). If, however, Respondent requests a hearing, the Presiding Officer (as defined in 40 C.F.R. § 22.3) may hold a hearing if the Answer(s) raises issues appropriate for adjudication. 40 C.F.R. § 22.15(c). With regard to the Compliance Order

in the Complaint, unless either Respondent requests a hearing pursuant to 40 C.F.R. § 22.15 within 30 days after the Compliance Order is served, the Compliance Order shall automatically become final. 40 C.F.R. § 22.37.

Any hearing in this proceeding will be held at a location determined in accordance with 40 C.F.R. § 22.21(d). A hearing of this matter will be conducted in accordance with the provisions of the Administrative Procedure Act, 5 U.S.C. §§ 551-59, and the procedures set forth in Subpart D of 40 C.F.R. Part 22.

### **C. Failure To Answer**

If Respondent fails in their Answer(s) to admit, deny, or explain any material factual allegation contained in the Complaint, such failure constitutes an admission of the allegation. 40 C.F.R. § 22.15(d). If Respondent fails to file a timely (*i.e.* in accordance with the 30-day period set forth in 40 C.F.R. § 22.15(a)) Answer(s) to the Complaint, Respondent may be found in default upon motion. 40 C.F.R. § 22.17(a). Default by Respondent constitutes, for purposes of the pending proceeding only, an admission of all facts alleged in the Complaint and a waiver of Respondent's right to contest such factual allegations. 40 C.F.R. § 22.17(a). Following a default by Respondent for a failure to timely file an Answer(s) to the Complaint, any order issued therefore shall be issued pursuant to 40 C.F.R. § 22.17(c).

Any penalty assessed in the default order shall become due and payable by Respondent without further proceedings 30 calendar days after the default order becomes final pursuant to 40 C.F.R. § 22.27(c). 40 C.F.R. § 22.17(d). If necessary, EPA may then seek to enforce such final order of default against Respondent, and to collect the assessed penalty amount, in federal court. Any default order requiring compliance action shall be effective and enforceable against Respondent without further proceedings on the date the default order becomes final under 40 C.F.R. § 22.27(c). 40 C.F.R. § 22.17(d).

### **D. Filing of Documents Filed After the Answer**

Unless otherwise ordered by the Presiding Officer for this proceeding and except with regard to the notifications required pursuant to the Compliance Order and/or regulations cited therein, all documents filed after Respondent has filed an Answer should be filed with the Headquarters Hearing Clerk, acting for the Regional Hearing Clerk, addressed as follows:

If filing by the United States Postal Service, address to:

Sybil Anderson  
Headquarters Hearing Clerk  
Office of Administrative Law Judges  
U.S Environmental Protection Agency  
1200 Pennsylvania Avenue, N.W.  
Mail Code 1900R  
Washington, DC 20460



If filing by UPS, FedEx, DHL or other Courier, or personal delivery, address to:

Sybil Anderson  
Headquarters Hearing Clerk  
Office of Administrative Law Judges  
Ronald Reagan Building, Rm M1200  
1300 Pennsylvania Avenue, N.W.  
Washington, DC 20460

#### **E. Exhaustion Of Administrative Remedies**

Where Respondent fails to appeal an adverse initial decision to the Environmental Appeals Board pursuant to 40 C.F.R. § 22.30, and that initial decision thereby becomes a final order pursuant to the terms of 40 C.F.R. § 22.27(c), Respondent waives the right to judicial review. 40 C.F.R. § 22.27(d).

To appeal an initial decision to the Agency's Environmental Appeals Board ("EAB"), Respondent must do so "[w]ithin 30 days after the initial decision is served upon the parties." 40 C.F.R. §22.30(a). Pursuant to 40 C.F.R. § 22.7(c), where service is affected by mail, "five days shall be added to the time allowed by these rules for the filing of a responsive pleading or document." Note that the 45-day period provided for in 40 C.F.R. § 22.27(c) (discussing when an initial decision becomes a final order) does not pertain to or extend the time period prescribed in 40 C.F.R. § 22.30(a) for a party to file an appeal to the EAB of an adverse initial decision.

#### **VI. INFORMAL SETTLEMENT CONFERENCE**

Whether or not Respondent requests a formal hearing, EPA encourages settlement of this proceeding consistent with the provisions of the Act and its applicable regulations. 40 C.F.R. § 22.18(b). At an informal conference with a representative(s) of Complainant, Respondent may comment on the charges made in the Complaint, and Respondent may also provide whatever additional information that it believes is relevant to the disposition of this matter, including: (1) actions Respondent has taken to correct any or all of the violations herein alleged, and/or (2) any other special facts or circumstances Respondent wishes to raise.

Complainant has the authority to modify the amount of the proposed penalty, where appropriate, to reflect any settlement agreement reached with Respondent, to reflect any relevant information previously not known to Complainant, or to dismiss any or all of the charges, if Respondent can demonstrate that the relevant allegations are without merit and that no cause of action as herein alleged exists. Respondent is referred to 40 C.F.R. § 22.18.

Any request for an informal conference or any questions that Respondent may have regarding this complaint should be directed to:

Lee A. Spielmann  
Assistant Regional Counsel  
U.S. Environmental Protection Agency  
290 Broadway, 16th floor  
New York, N.Y. 10007-1866  
212-637-3222  
spielmann.lee@epa.gov

The parties may engage in settlement discussions irrespective of whether Respondent has requested a hearing. 40 C.F.R. § 22.18(b)(1). Respondent's request for a formal hearing does not prevent it from also requesting an informal settlement conference; the informal conference procedure may be pursued simultaneously with the formal adjudicatory hearing procedure. A request for an informal settlement conference constitutes neither an admission nor a denial of any of the matters alleged in the Complaint. Complainant does not deem a request for an informal settlement conference as a request for a hearing as specified in 40 C.F.R. § 22.15(c).

A request for an informal settlement conference does not affect Respondent's obligation to file a timely Answer(s) to the Complaint pursuant to 40 C.F.R. § 22.15. No penalty reduction, however, will be made simply because an informal settlement conference is held.

Any settlement that may be reached as a result of an informal settlement conference shall be embodied in a written consent agreement. 40 C.F.R. § 22.18(b)(2). In accepting the consent agreement, Respondent waives the right to contest the allegations in the Complaint and waives the right to appeal the final order that is to accompany the consent agreement. 40 C.F.R. § 22.18(b)(2). To conclude the proceeding, a final order ratifying the parties' agreement to settle will be executed. 40 C.F.R. § 22.18(b)(3).

Respondent entering into a settlement through the signing of such Consent Agreement and its complying with the terms and conditions set forth in the such Consent Agreement terminate this administrative litigation and the civil proceedings arising out of the allegations made in the Complaint. Respondent entering into a settlement does not extinguish, waive, satisfy or otherwise affect its obligation and responsibility to comply with all applicable statutory and regulatory requirements, and to maintain such compliance.

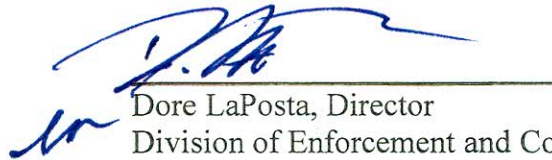


**VII. RESOLUTION OF THIS PROCEEDING WITHOUT HEARING OR  
CONFERENCE**

If, instead of filing an Answer, Respondent wishes not to contest the Compliance Order in the Complaint and wants to pay the total amount of the proposed penalty within 30 calendar days after receipt of the Complaint, Respondent should promptly contact the Assistant Regional Counsel identified on the previous page.

Dated: September 20, 2016  
New York, New York

**COMPLAINANT:**



Dore LaPosta, Director  
Division of Enforcement and Compliance Assistance  
Environmental Protection Agency, Region 2  
290 Broadway, 21<sup>st</sup> floor  
New York, New York 10007-1866

To: Luis Figueroa, President  
Caribbean All Metal Recyclers Corp.  
P.O. Box 116, Saint Just Station  
Carolina, Puerto Rico 00978

cc: Nilda del Mar Sanchez Santiago, Esq.  
Director, Land Pollution Control Division  
Puerto Rico Environmental Quality Board  
P.O. Box 11488  
Santurce, Puerto Rico 00910

CERTIFICATE OF SERVICE

This is to certify that on the day of Oct 4, 2016, I caused to be mailed a true and correct copy of the foregoing "COMPLAINT, COMPLIANCE ORDER AND NOTICE OF OPPORTUNITY FOR HEARING," bearing Docket Number RCRA-02-2016-7103, together with Attachments I & II (collectively henceforth referred to as the "Complaint"), and with a copy of the "CONSOLIDATED RULES OF PRACTICE GOVERNING THE ADMINISTRATIVE ASSESSMENTS OF CIVIL PENALTIES, ISSUANCE OF COMPLIANCE OR CORRECTIVE ACTION COMPLIANCE ORDERS, AND THE REVOCATION, TERMINATION OR SUSPENSION OF PERMITS," 40 C.F.R. Part 22, by certified mail, return receipt requested, to the following addressee listed below. I also on said date hand carried the original and a copy of the Complaint to the Office of the Regional Hearing Clerk of the United States Environmental Protection Agency, Region 2, 290 Broadway, 16<sup>th</sup> floor, New York, New York 10007-1866.

Mr. Luis Figueroa  
President  
Caribbean All Metal Recyclers Corp.  
P.O. Box 116, Saint Just Station  
Carolina, Puerto Rico 00978

Dated: October 4, 2016  
New York, New York

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ATTACHMENT I

**PENALTY CALCULATION WORKSHEETS  
WITH NARRATIVE EXPLANATION**

Caribbean All Metal Recyclers Corp.

**CARIBBEAN ALL METAL RECYCLERS CORP., CAROLINA, PUERTO RICO:  
NARRATIVE EXPLANATION TO SUPPORT COMPLAINT AMOUNT  
Penalty Computation Worksheet (Count 1)**

**Respondent:** Caribbean All Metal Recyclers Corp.

**Facility Address:** Carr. 848, Km 2.9, San Anton Ward, Carolina, Puerto Rico 00978

**Requirement Violated:** 40 C.F.R. §§ 262.52, 262.53 and 40 C.F.R. Part 266.80(a)

- Respondent exported spent lead-acid batteries (SLABs) to China without complying with a number of regulatory requirements that must be satisfied for such exports to occur, such requirements codified at 40 C.F.R. §§ 262.52, 262.53, and 266.80(a), the latter referencing 40 C.F.R. Part 262, Subpart E. These requirements specify, *inter alia*, that, for shipments to a country like China, EPA be notified of the exports prior to such waste being scheduled to leave the United States and that specified documentation accompany any such shipment.

**PENALTY AMOUNT FOR COMPLAINT**

1. Gravity based penalty from matrix	\$14,111
(a) Potential for harm	MODERATE
(b) Extent of Deviation	MAJOR
2. Select an amount from the appropriate multiple matrix cell	N/A
3. Multiply line 2 by number of number of days minus 1:	N/A
4. Add line 1 and line 3	\$14,111
5. Percent increase/decrease for good faith	N/A
6. Percent increase for willfulness/negligence	N/A
7. Percent increase for history of noncompliance	N/A
8. Total lines 5 through 7	N/A
9. Multiply line 4 by line 8	N/A
10. Calculate economic benefit -- de minimis	N/A
11. Add lines 4, 9 and 10 for penalty amount to be inserted into the complaint	<b>\$14,111</b>



**CARIBBEAN ALL METAL RECYCLERS CORP., CAROLINA, PUERTO RICO:  
NARRATIVE EXPLANATION TO SUPPORT COMPLAINT AMOUNT  
Penalty Computation Worksheet (Count 1)**

1) Gravity Based Penalty

- a) Potential for Harm - The potential for harm for the violations alleged in Count 1 is deemed to be MODERATE. The 2003 RCRA Civil Penalty Policy provides that the potential for harm should be based on two factors: the risk of human or environmental exposure; and the adverse impact of the noncompliance on the regulatory scheme. Lead-acid batteries are rechargeable batteries that are widely found throughout the world and are commonly used in motor vehicles; these batteries are made up of lead plates and sulfuric acid that are contained within a plastic cover. This count alleges multiple shipments (seven) that Respondent unlawfully exported, *i.e.* a failure to comply with the notification and documentation requirements that must occur for such shipments to be lawfully made. The requirements are set forth in 40 C.F.R. §§ 262.52, 262.53 and 266.80. EPA promulgated these regulations to strengthen the notification and consent procedures for the export of spent lead acid batteries in order to better ensure the Agency's ability to track the export of these hazardous wastes and as part of an overall effort to effect their environmentally-sound handling and management. The RCRA regulatory program is undermined when an owner/operator of a facility fails to notify EPA of its intent to export spent lead-acid batteries to a non-OECD country and when such a person fails to comply with the documentation requirements, and, accordingly, through Respondent's export of these seven shipments without it having met such requirements, Respondent impedes EPA's ability to try to ensure that the handling and managing of these wastes occurred in such a way as to minimize their impact on the environment. The count does not, however, allege that adverse environmental consequences resulted from these shipments. The potential for harm was deemed to be MODERATE.
- b) Extent of Deviation - The extent of deviation present in this violation was determined to be MAJOR. Respondent made seven shipments and deviated fully from the mandatory requirements. The applicable cell ranges from \$11,882 to \$16,339. The midpoint of the cell matrix was selected (\$14,111).
- c) Multiple/Multi-day - Notification and consent under 40 C.F.R. §§ 262.52 and 262.53 and Part 266, Subpart G, is an annual requirement. Although multiple shipments to China took place in June 2015, it was necessary to meet this requirement only before the first shipment. As is noted at 40 C.F.R. § 262.53(a), a single notification may cover export activities extending over a twelve (12) month or lesser period. In light of this, EPA has elected not to include a penalty component for each separate shipment.

2) Adjustment Factors

- a) Good Faith - Based upon available information and considering Respondent did not identify the problem and take corrective measures prior to EPA's inspection, no adjustment has been made at this time.
- b) Willfulness/Negligence - Not applicable.

- c) History of Compliance - Based upon available information, no adjustment has been made at this time.
  - d) Ability to Pay - Not applicable.
  - e) Environmental Project - Not applicable.
  - f) Other Unique Factors - Not applicable
- 3) Economic Benefit - At this time, EPA is not seeking to recover the economic benefit, because, based on the information EPA has to date obtained, it is believed to be under the level considered to be significant under the guidance provided by the 2003 RCRA Civil Penalty Policy.



**CARIBBEAN ALL METAL RECYCLERS CORP., CAROLINA, PUERTO RICO:  
NARRATIVE EXPLANATION TO SUPPORT COMPLAINT AMOUNT  
Penalty Computation Worksheet (Count 2)**

**Respondent:** Caribbean All Metal Recyclers Corp.

**Facility Address:** Carr. 848, Km 2.9, San Anton Ward, Carolina, Puerto Rico 00978

**Requirements Violated:** 40 C.F.R. § 262.83 and 40 C.F.R. § 266.80(a)

Respondent exported spent lead-acid batteries (SLABs) to the Republic of Korea without complying with the notification and consent requirements of 40 C.F.R. Part 266, Subpart G which references 40 C.F.R. Part 262, Subpart H. Specifically, Respondent failed to notify EPA of its intent to export SLABs to the Republic of Korea.

**PENALTY AMOUNT FOR COMPLAINT**

1. Gravity based penalty from matrix	\$16,339
(a) Potential for harm	MODERATE
(b) Extent of Deviation	MAJOR
2. Select an amount from the appropriate multiple matrix cell	N/A
3. Multiply line 2 by number of number of days minus 1:	N/A
4. Add line 1 and line 3	\$16,339
5. Percent increase/decrease for good faith	N/A
6. Percent increase for willfulness/negligence	N/A
7. Percent increase for history of noncompliance	N/A
8. Total lines 5 through 7	N/A
9. Multiply line 4 by line 8	N/A
10. Calculate economic benefit -- de minimis	N/A
11. Add lines 4, 9 and 10 for penalty amount to be inserted into the complaint	<b>\$16,339</b>

**CARIBBEAN ALL METAL RECYCLERS CORP., CAROLINA, PUERTO RICO:  
NARRATIVE EXPLANATION TO SUPPORT COMPLAINT AMOUNT  
Penalty Computation Worksheet (Count 2)**

1) Gravity Based Penalty

- a) Potential for Harm - The potential for harm for the violations alleged in this count is deemed to be MODERATE. The 2003 RCRA Civil Penalty Policy provides that the potential for harm should be based on two factors: the risk of human or environmental exposure; and the adverse impact of the noncompliance on the regulatory scheme. Lead-acid batteries are rechargeable batteries that are widely found throughout the world and are commonly used in motor vehicles; these batteries are made up of lead plates and sulfuric acid that are contained within a plastic cover. This count alleges multiple shipments (23) without Respondent having complied with the required notification provisions of 40 C.F.R. Part 262, Subpart H and 40 C.F.R. Part 266, Subpart G. EPA promulgated such regulations to strengthen the notification and consent procedures for the export of spent lead acid batteries in order to better ensure the Agency's ability to track the export of these hazardous wastes and as part of an overall effort to effect their environmentally-sound handling and management. The RCRA regulatory program is undermined when an owner/operator of a facility fails to notify EPA of its intent to export spent lead-acid batteries to a member country of the OECD, and through Respondent's export of these 23 shipments without it having met the notification requirements, Respondent impedes EPA's ability to try to ensure that the handling and managing of these wastes occurred in such a way as to minimize their impact on the environment. The count does not, however, allege that adverse environmental consequences resulted from these shipments. The potential for harm was deemed to be MODERATE.
- b) Extent of Deviation - The extent of deviation present in this violation was determined to be MAJOR. Respondent made 23 shipments over a two-month period and deviated fully from the mandatory notification requirement in that it failed to notify EPA prior to any of these shipments. The applicable cell ranges from \$11,882 to \$16,339. The highpoint of the cell matrix was selected (\$16,339) because there were 23 separate shipments (in contrast to the far fewer (seven) shipments in Count 1).
- c) Multiple/Multi-day - Notification and consent under 40 C.F.R. Part 266, Subpart G is an annual requirement. Although multiple shipments to the Republic of Korea took place in May and June 2015, it was necessary to meet this requirement only before the first shipment. As is noted at 40 C.F.R. § 262.83(b)(1)(i), in cases where wastes have similar physical and chemical characteristics, the same United Nations classification, the same RCRA waste codes, and are to be sent periodically to the same recovery facility by the same exporter, the exporter may submit one general notification of intent to export these wastes in multiple shipments during a period of up to one (1) year. In light of this, EPA has elected not to include a multiple penalty component for each separate shipment.



2) Adjustment Factors

- a) Good Faith - Based upon available information and considering that Respondent did not identify the problem and take corrective action prior to EPA's inspection, no adjustment has been made at this time.
  - b) Willfulness/Negligence - Not applicable.
  - c) History of Compliance - Based upon available information, no adjustment has been made at this time.
  - d) Ability to Pay - Not applicable.
  - e) Environmental Project - Not applicable.
  - f) Other Unique Factors - Not applicable
- 3) Economic Benefit - At this time, EPA is not seeking to recover the economic benefit, because it is believed to be under the level considered to be significant under the guidance provided by the 2003 RCRA Civil Penalty Policy.

**ATTACHMENT II-TABLE I**

**GRAVITY MATRIX**

**Gravity-Based Penalty Matrix  
To Supplement the RCRA Civil Penalty Policy  
For Violations That Occur Between December 7, 2013 and November 2, 2015**

<b>EXTENT OF DEVIATION FROM REQUIREMENT</b>				
<b>P O T E N T I A L  F O R  H A R M</b>		<b>MAJOR</b>	<b>MODERATE</b>	<b>MINOR</b>
	<b>MAJOR</b>	<b>\$39,326 to \$29,710</b>	<b>\$29,709 to \$22,285</b>	<b>\$22,284 to \$16,339</b>
	<b>MODERATE</b>	<b>\$16,339 to \$11,882</b>	<b>\$11,881 to \$7,435</b>	<b>\$7,434 to \$4,457</b>
	<b>MINOR</b>	<b>\$4,457 to \$2,234</b>	<b>\$2,233 to \$745</b>	<b>\$744 to \$157</b>



**ATTACHMENT II-TABLE II**

**MULTI-DAY MATRIX**

**Multi-Day Matrix of Minimum Daily Penalties  
To Supplement the RCRA Civil Penalty Policy  
For Violations That Occur Between December 7, 2013 and November 2, 2015**

<b>EXTENT OF DEVIATION FROM REQUIREMENT</b>				
<b>P O T E N T I A L  F O R  H A R M</b>		<b>MAJOR</b>	<b>MODERATE</b>	<b>MINOR</b>
	<b>MAJOR</b>	<b>\$7,435 to \$1,489</b>	<b>\$5,946 to \$1,122</b>	<b>\$4,457 to \$818</b>
	<b>MODERATE</b>	<b>\$3,272 to \$598</b>	<b>\$2,339 to \$378</b>	<b>\$1,489 to \$231</b>
	<b>MINOR</b>	<b>\$891 to \$157</b>	<b>\$451 to \$157</b>	<b>\$157</b>