



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2
290 BROADWAY
NEW YORK, NY 10007-1866

MAR - 1 2011

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

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

Re: In the Matter of The Battery Recycling Company, Inc.
Docket No. EPCRA-02-2011-4301

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG.11
2011 MAR -9 P 2:32
REGIONAL HEARING
CLERK

Dear Mr. Figueroa:

Enclosed is the Complaint and Notice of Opportunity for Hearing in the above referenced proceeding. This Complaint alleges violations of Title III, Emergency Planning and Community Right-To-Know Act (EPCRA), Section 313 and regulations promulgated pursuant to EPCRA set forth at 40 C.F.R. Part 372.

You have the right to a hearing to contest any of the allegations in the Complaint. If you admit any of the allegations, or any are found to be true after you have had an opportunity for a hearing on any of them, you have the right to contest the penalty proposed in the complaint.

If you wish to contest the allegations or the penalty proposed in the Complaint, you must file an Answer within *thirty (30)* days of your receipt of the enclosed Complaint to the Environmental Protection Agency's (EPA) Regional Hearing Clerk at the following address:

Ms. Karen Maples, Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th Floor
New York, New York 10007-1866

If you do not file an Answer within thirty (30) days of receipt of this Complaint and have not obtained a formal extension for filing an Answer from the Regional Judicial Officer, a default order may be entered against you and the entire proposed penalty may be assessed without further proceedings.

Whether or not you request a formal hearing, you may request an informal conference with EPA to discuss any issue relating to the alleged violations and the amount of the proposed penalty. EPA encourages all parties against whom it files a Complaint to pursue the possibility of

settlement and to have an informal conference with EPA. However, a request for an informal conference does not substitute for a written Answer, affect what you may choose to say in an Answer, or extend the thirty (30) days by which you must file an Answer requesting a hearing.


Enclosed are copies of the "Consolidated Rules of Practice," which govern this proceeding. For your general information and use, I have also enclosed both an "Information Sheet for U.S. EPA Small Business Resources" and a "Notice of SEC Registrants' Duty to Disclose Environmental Legal Proceeding," which may or may not apply to you.

EPA encourages the use of Supplemental Environmental Projects, where appropriate, as part of any settlement. I am enclosing a brochure on "EPA's Supplemental Environmental Projects Policy." Please note that these are only available as part of a negotiated settlement and are not available if this case has to be resolved by a formal adjudication.

If you have any questions or wish to discuss a settlement of this matter with the EPA by an informal conference, please immediately contact:

Roberto Durango, Esq.
Assistant Regional Counsel
U.S. EPA, Region 2
Centro Europa Building, Suite 417
1492 Ponce de León Avenue
San Juan, Puerto Rico 00907-4127
Tel.:(787) 977-5822 / Fax: (787) 729-7748.

Sincerely,



Dore LaPosta, Director
Division of Enforcement and Compliance Assistance

Enclosures

cc: Mr. Genaro Torres
Director, Superfund and Emergencies
Title III-SARA Section 313
Puerto Rico Environmental Quality Board
Santurce, Puerto Rico 00910

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG.11
2011 MAR -9 P 2:32
REGIONAL HEARING
CLERK

IN THE MATTER OF:

The Battery Recycling Company, Inc.
Bo. Cambalache, Rd. #2, Km. 72.2
Arecibo, PR 00613-1016

RESPONDENT

DOCKET NUMBER EPCRA-02-2011-4301

PROCEEDING PURSUANT TO SECTION
325(c) OF TITLE III OF THE SUPERFUND
AMENDMENTS AND REAUTHORIZATION
ACT

**COMPLAINT, FINDINGS OF VIOLATION, NOTICE OF PROPOSED
ASSESSMENT OF A CIVIL PENALTY, AND NOTICE OF
OPPORTUNITY TO REQUEST A HEARING**

Complainant, as and for her Complaint against Respondent, hereby alleges:

1. This civil administrative action is instituted pursuant to Section 325(c) of Title III of the Superfund Amendments and Reauthorization Act (42 U.S.C. § 11001 *et seq.*) which is also known as the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA).
2. The Complainant, Dore LaPosta, Director, Division of Enforcement and Compliance Assistance, United States Environmental Protection Agency (EPA), Region 2, has been duly delegated the authority to institute this action.
3. Respondent is The Battery Recycling Company, Inc. (BRC).
4. Respondent maintains a facility that is the subject of this Complaint at Bo. Cambalache, Rd. #2, Km. 72.2, Arecibo, PR 00613-1016 (Respondent's Facility).
5. Pursuant to Sections 313 and 328 of EPCRA, 42 U.S.C. §§ 11023 and 11048, EPA promulgated the Toxic Chemical Release Reporting: Community Right-to-Know Rule (40 C.F.R. Part 372).
6. Under Section 313 of EPCRA and 40 C.F.R. § 372.22, owners or operators of a facility subject to the requirements of Section 313(b) are required to submit, annually, no later than July 1 of each year, a Toxic Chemical Release Inventory Reporting Form R, EPA Form 9350-1 (Form R), for each toxic chemical listed under 40 C.F.R. § 372.65 and/or 40 C.F.R. § 372.28 that was manufactured, imported, processed, or otherwise used during the

preceding calendar year in quantities exceeding the established toxic chemical thresholds. The completed and accurate Form R is required to be submitted to the Regional Administrator of the EPA and to the State in which the subject facility is located.

7. As an alternative to the requirements set forth above, pursuant to Section 313(f)(2) of EPCRA (42 U.S.C. § 11023(f)(2)), and 40 C.F.R. § 372.27, owners or operators of a facility subject to the requirements of Section 313(b), with respect to the manufacture, process or otherwise use of a toxic chemical, may apply an alternate threshold of one million (1,000,000) pounds per year to that chemical if the conditions set forth in 40 C.F.R. § 372.27(a) are met. If the aforementioned alternate threshold for a specific toxic chemical is applicable, such owners or operators, in lieu of filing a Form R, may submit an "Alternate Threshold Certification Statement" (Form A) (see 71 Fed. Reg. 76,944, Dec. 22, 2006) pursuant to 40 C.F.R. § 372.27(b). Pursuant to 40 C.F.R. § 372.27(e)(3), EPA has excluded the Persistent Bioaccumulative Toxic Chemical (PBT) dioxin, and dioxin-like compounds, from eligibility for the Alternate Thresholds described in 40 C.F.R. § 372.27(a).

8. This Complaint serves notice that Complainant has reason to believe that Respondent failed to submit timely, complete, and accurate Toxic Chemical Release Inventory Reporting Form R reports as required by Section 313 of EPCRA (42 U.S.C. § 11023), and the Federal regulations that set out in greater detail the Section 313 reporting requirements codified at 40 C.F.R. Part 372.

9. Respondent is a corporation organized pursuant to the laws of the Commonwealth of Puerto Rico.

10. Respondent is a "person" within the meaning of Section 329(7) of EPCRA (42 U.S.C. § 11049(7)).

11. Respondent is an owner of a "facility" as that term is defined by Section 329(4) of EPCRA, 42 U.S.C. § 11049(4), and by 40 C.F.R. § 372.3.

12. Respondent is an operator of a "facility" as that term is defined in Section 329(4) of EPCRA (42 U.S.C. § 11049(4)), and in 40 C.F.R. § 372.3.

13. Respondent's facility has 10 or more "full time employees" as the term is defined by 40 C.F.R. § 372.3.

14. Respondent's Facility is in the Standard Industrial Classification (SIC) Code 3692.

15. Respondent's Facility is in the North American Industry Classification System (NAICS) Code 423610.

16. 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.

17. On or about October 28, 2008, authorized representatives of EPA conducted an inspection of Respondent's Facility to determine Respondent's compliance with the Toxic Chemical Release Reporting requirements (the Inspection).

COUNT 1

18. Complainant realleges each allegation contained in Paragraphs "1" through "17" with the same force and effect as if fully set forth herein.

19. Pursuant to the Inspection, EPA representatives determined that during the 2005 calendar year, Respondent processed (as defined in 40 C.F.R. § 372.3) approximately 13,103,371 pounds of lead, Chemical Abstracts Service (CAS) Registry Number 7439-92-1.

20. Lead is listed under 40 C.F.R. § 372.65 and 40 C.F.R. § 372.28.

21. The established threshold amount for reporting the lead or lead compounds for the 2005 calendar year was 100 pounds. [40 C.F.R. § 372.28].

22. Respondent "processed" lead or lead compounds in quantities exceeding the established threshold for reporting during the 2005 calendar year. [40 C.F.R. § 372.28].

23. Respondent was required to submit by July 1, 2006 a complete and accurate Form R for lead for the 2005 calendar year to the Administrator of EPA and to the Commonwealth of Puerto Rico.

24. Respondent failed to submit to the Administrator and to the Commonwealth of Puerto Rico, in a timely manner, a complete and accurate Form R for lead in 2005.

25. Respondent's failure to submit in a timely manner a complete and accurate Form R or for lead constitutes a failure or refusal to comply with Section 313 of EPCRA (42 U.S.C. § 11023), and with 40 C.F.R. § 372.30.

COUNT 2

26. Complainant realleges each allegation contained in Paragraphs "1" through "25" with the same force and effect as if fully set forth herein.

27. Pursuant to the Inspection, EPA representatives determined that during the 2006 calendar year, Respondent processed (as defined in 40 C.F.R. § 372.3) approximately 15,312,722 pounds of lead, Chemical Abstracts Service (CAS) Registry Number 7439-92-1.

28. Lead is listed under 40 C.F.R. § 372.65 and 40 C.F.R. § 372.28.

29. The established threshold amount for reporting lead or lead compounds for the 2006 calendar year was 100 pounds. [40 C.F.R. § 372.28].

30. Respondent "processed" lead or lead compounds in quantities exceeding the established threshold for reporting during the 2006 calendar year. [40 C.F.R. § 372.28].

31. Respondent was required to submit by July 1, 2007 a complete and accurate Form R for lead for the 2006 calendar year to the Administrator of EPA and to the Commonwealth of Puerto Rico.

32. Respondent failed to submit to the Administrator and to the Commonwealth of Puerto Rico, in a timely manner, a complete and accurate Form R for lead in 2006.

33. Respondent's failure to submit in a timely manner a complete and accurate Form R for lead constitutes a failure or refusal to comply with Section 313 of EPCRA (42 U.S.C. § 11023), and with 40 C.F.R. § 372.30.

COUNT 3

34. Complainant realleges each allegation contained in Paragraphs "1" through "33" with the same force and effect as if fully set forth herein.

35. Pursuant to the Inspection, EPA representatives determined that during the 2007 calendar year, Respondent processed (as defined in 40 C.F.R. § 372.3) approximately 19,583,676 pounds of lead, Chemical Abstracts Service (CAS) Registry Number 7439-92-1.

36. Lead is listed under 40 C.F.R. § 372.65 and 40 C.F.R. § 372.28.

37. The established threshold amount for reporting lead or lead compounds for the 2007 calendar year was 100 pounds. [40 C.F.R. § 372.28].

38. Respondent “processed” lead or lead compounds in quantities exceeding the established threshold for reporting during the 2007 calendar year. [40 C.F.R. § 372.28].

39. Respondent was required to submit by July 1, 2008 a complete and accurate Form R for lead for the 2007 calendar year to the Administrator of EPA and to the Commonwealth of Puerto Rico.

40. Respondent failed to submit to the Administrator and to the Commonwealth of Puerto Rico, in a timely manner, a complete and accurate Form R for lead in 2007.

41. Respondent's failure to submit in a timely manner a complete and accurate Form R for lead constitutes a failure or refusal to comply with Section 313 of EPCRA (42 U.S.C. § 11023), and with 40 C.F.R. § 372.30.

PROPOSED CIVIL PENALTY

The proposed civil penalty has been determined in accordance with Section 325(c) of EPCRA (42 U.S.C. § 11045(c)), which authorizes the assessment of a civil penalty of up to \$25,000 per day for each violation of Section 313 of EPCRA 42 U.S.C. §11023. Pursuant to the Debt Collection and Improvement Act, the civil penalties have been increased and currently allow for a civil penalty of not more than \$32,500 per violation per day, 31 U.S.C. § 3701 et seq. (DCIA), and 40 C.F.R. Part 19, promulgated pursuant to DCIA.

To develop the proposed penalty in this Complaint, Complainant has taken into account the particular facts and circumstances of this case, to the extent known at the time, with specific reference to EPA's “Enforcement Response Policy for Section 313 of EPCRA” dated April 12, 2001, a copy of which is available upon request. This policy provides a rational, consistent and equitable calculation methodology for penalties in particular cases. In calculating a proposed penalty pursuant to this policy, EPA takes into account the gravity of the violations, as well as certain factors such as a violator's history of prior such violations and its ability to pay.

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

<u>COUNT 1</u> – Failure to submit a Toxic Chemical Release Inventory Reporting Form R for lead for the 2005 Calendar Year	\$32,500
<u>COUNT 2</u> – Failure to submit a Toxic Chemical Release Inventory Reporting Form R for lead for the 2006 Calendar Year	\$32,500
<u>COUNT 3</u> – Failure to submit a Toxic Chemical Release Inventory Reporting Form R for lead for the 2007 Calendar Year	<u>\$32,500</u>
*TOTAL PROPOSED PENALTY:	\$97,500

*In accordance with Agency policies regarding modifications to the relevant penalty policies, the total gravity-based penalty amount is rounded to the nearest unit of 100 dollars.

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 Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits” (CROP), which have been codified at 40 C.F.R. Part 22. A copy of such rules accompanies this Complaint.

A. Answering the Complaint

Where Respondent intends to contest any material fact upon which the Complaint is based, to contend that the proposed penalty 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 to the Complaint. 40 C.F.R. § 22.15(a). The address of the Regional Hearing Clerk of EPA, Region 2, is:

Ms. Karen Maples, Regional Hearing Clerk
Office of the Regional Hearing Clerk
U.S. EPA, Region 2
290 Broadway, 16th Floor (1631)
New York, New York 10007-1866

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

Respondent's Answer 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 its Answer, the allegation is deemed denied. [40 C.F.R. § 22.15(b)] The Answer 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 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 in its answer, a hearing upon the issues raised by the Complaint and Answer may be held. See, 40 C.F.R. § 22.15(c). If, however, Respondent does not request a hearing, the Presiding Officer (as defined in 40 C.F.R. § 22.3) may hold a hearing if the Answer raises issues appropriate for adjudication. See, 40 C.F.R. § 22.15(c).

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 applicable 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 its Answer 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 Answer to the Complaint [i.e., in accordance with the period set forth in 40 C.F.R. § 22.15(a); extended to 90 days for this 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 to the Complaint, any order issued thereof 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 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.

D. 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 its right to judicial review. [40 C.F.R. § 22.27(d)]

In order to appeal an initial decision to the Agency's Environmental Appeals Board (EAB), 40 C.F.R. § 1.25(e), Respondent must do so "within thirty (30) days after the initial decision is served." Pursuant to 40 C.F.R. § 22.07(c), where service is effected 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.

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 this 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; (2) any information relevant to Complainant's calculation of the proposed penalty; (3) the effect the proposed penalty would have on Respondent's ability to continue in business; and/or, (4) 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:

Roberto M. Durango, Esq.
Assistant Regional Counsel
U.S. EPA, ORC, Region 2
1429 Ponce De Leon Avenue
Santurce, PR 00907-4127
Phone: (787) 977-5822

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 requesting 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 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 its right to contest the allegations in the Complaint and waives its right to appeal the Final Order that is to accompany the Consent Agreement. [40 C.F.R. § 22.18(b)(2)] In order 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's 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's 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.

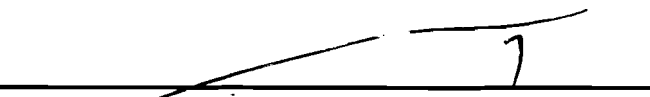
RESOLUTION OF THIS PROCEEDING WITHOUT HEARING OR CONFERENCE

Instead of filing an Answer, Respondent may resolve this proceeding by paying the specific penalty proposed in the Complaint and filing a copy of the check or other instrument of payment with the Regional Hearing Clerk, Region 2 (at the New York address noted above). [40 C.F.R. § 22.18(a)] A copy of the check or other instrument of payment should also be provided to the EPA contact identified on the previous page. Payment of the penalty assessed should be made by sending a cashier's or certified check payable to the "Treasurer, United States of America", in the full amount of the penalty assessed in this Complaint to the following addressee:

Regional Hearing Clerk
United States Environmental Protection Agency - Region 2
P.O. Box 360188M
Pittsburgh, Pennsylvania 15251

Pursuant to 40 C.F.R. § 22.18(a)(3), upon EPA's receipt of such payment, the Regional Administrator of EPA, Region 2 (or, if designated, the Regional Judicial Officer), shall issue a Final Order. Issuance of this Final Order terminates this administrative litigation and the civil proceedings arising out of the allegations made in the Complaint. Further, pursuant to 40 C.F.R. § 22.18(a)(3), the making of such payment by Respondent shall constitute a waiver of Respondent's right both to contest the allegations made in the Complaint and to appeal said Final Order to federal court. Such payment does not extinguish, waive, satisfy or otherwise affect Respondent's obligation and responsibility to comply with all applicable regulations and requirements, and to maintain such compliance.

Dated: March 1, 2011


Dore LaRosta, Director
Division of Enforcement and Compliance Assistance
United States Environmental Protection Agency
Region 2
290 Broadway
New York, New York 10007

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

IN THE MATTER OF:

The Battery Recycling Company, Inc.
Bo. Cambalache, Rd. #2, Km. 72.2
Arecibo, PR 00613-1016

RESPONDENT

DOCKET NUMBER EPCRA-02-2011-4301

PROCEEDING PURSUANT TO SECTION
325(c) OF TITLE III OF THE SUPERFUND
AMENDMENTS AND REAUTHORIZATION
ACT

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **Administrative Complaint**, dated March 1, 2011, was sent in the following manner to the addresses listed below:

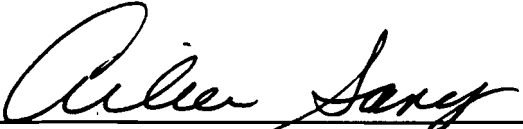
Original and Copy by **Overnight**:

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

Copy by **Certified Mail**:

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

Dated: 3/8/2011


Aileen Sánchez, Program Support Assistant
EPA, Region 2, Office of Regional Counsel

PENALTY CALCULATIONS
The Battery Recycling Company, Inc.

Docket Number: EPCRA-02-2011-4301

BASIS: EPCRA SECTION 313 PENALTY POLICY (April 12, 2001) and the Civil Monetary Penalty Inflation Adjustment Rules dated February 13, 2004 (69 Fed. Reg. 7,121).

DOCKET NUMBER: EPCRA-02-2011-4301
TRI Facility ID. No.: 00612BTTRYRD2KM

The company has approximately 97 employees
Gross Annual Sales are approximately 21 million dollars

EPCRA was enacted as 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")]. EPCRA requires regulated facilities to provide information to EPA, state and community groups concerning chemicals handled by the facility, released or transferred.

The Battery Recycling Company is subject to the Toxic Chemical Release reporting requirements of 40 CFR Part 372 because they employ more than 10 full time employees; have a SIC code of 3692 (Primary Batteries, Dry and Wet) and NAICS code of 423610 (Electrical Apparatus and Equipment, Wiring Supplies, and Related Equipment Related Wholesalers) and they manufacture, process, or otherwise use listed toxic chemicals in excess of the applicable thresholds. The company receives approximately 2 million pounds of lead acid batteries from within Puerto Rico on a yearly basis. These are broken down into their component parts and the lead is recovered for resale. The facility has been classified as a secondary lead smelter since 2004.

An EPCRA Section 313 neutral scheme compliance inspection was conducted at the facility by Region 2 on October 28, 2008. The lead EPCRA investigator was Lizette Lugo, Multimedia Permits & Compliance Branch, CEPD. The Region 2 co-inspector was Mary Ann Kowalski, Pesticides and Toxic Substances Branch, DECA.

Based on available information, it was determined that from 2004 to 2007, the facility had failed to submit, in a timely manner, complete and correct Toxic Release Inventory Reporting Form R reports for lead for calendar years, 2004, 2005, 2006 and 2007 to the Administrator and to the Commonwealth of Puerto Rico as required under Section 313 of EPCRA. Lead is a listed Persistent Bioaccumulative Toxin under 40 C.F.R. Part 372.28 and § 372.65.

Each failure to submit, in a timely manner, a Form R or Form A for lead for each of years 2004, 2005, 2006 and 2007 constitutes a failure to comply with Section 313 of EPCRA (42 U.S.C. §11023) and with 40 C.F.R. Part 372.

M. Kowalski
2/22/11

COUNT 1**(LEAD)**

Failure to submit in a timely manner a TRI Form R report for processing approximately 13,103,371 pounds of lead (CAS No.: 7439-92-1) in calendar year 2005.

EVIDENCE: Email from the company dated January 27, 2009. A neutral scheme inspection was conducted at the facility on October 28, 2008.

EXTENT LEVEL:**(1) Category I:**

Form A or Form R reports greater than one year late. The due date for 2005 was July 1, 2006.

(2) Extent Level A:

Greater than \$10 million in total corporate entity sales (about 21 million dollars) and greater than 50 employees (company averages 97 employees).

Facility processes greater than 10 times the 100 pound threshold of the §313 chemical. Lead is considered a Persistent Bioaccumulative Toxin. The threshold was lowered to 100 pounds in 2001.

(3) Circumstance Level 1 - Failure to file a Form R or Form A.

Proposed Penalty = \$32,500

Civil Monetary Penalty Inflation Adjustment Rules dated February 13, 2003 (69 Fed. Reg. 7121)

COUNT 2**(LEAD)**

Failure to submit in a timely manner a TRI Form R report for processing approximately 15,312,722 pounds of lead (CAS No.: 7439-92-1) in calendar year 2006.

EVIDENCE: Email from the company dated January 27, 2009. A neutral scheme inspection was conducted at the facility on October 28, 2008.

EXTENT LEVEL:**(1) Category I:**

Form A or Form R reports greater than one year late. The due date for 2006 was July 1, 2007.

(2) Extent Level A:

Greater than \$10 million in total corporate entity sales (about 21 million dollars) and greater than 50 employees (company averages 97 employees).

Facility processes greater than 10 times the 100 pound threshold of the §313 chemical. Lead is considered a Persistent Bioaccumulative Toxin. The threshold was lowered to 100 pounds in 2001.

(3) Circumstance Level 1 - Failure to file a Form R or Form A.

Proposed Penalty = \$32,500

Civil Monetary Penalty Inflation Adjustment Rules dated February 13, 2003 (69 Fed. Reg. 7121)

**COUNT 3
(LEAD)**

Failure to submit in a timely manner a TRI Form R report for processing approximately 119,583,676 pounds of lead (CAS No.: 7439-92-1) in calendar year 2007.

EVIDENCE: Email from the company dated January 27, 2009. A neutral scheme inspection was conducted at the facility on October 28, 2008. The inspection is attached.

EXTENT LEVEL:**(1) Category I:**

Form A or Form R reports greater than one year late. The due date for 2007 was July 1, 2008. Facility reported on 10-08-2009,

(2) Extent Level A:

Greater than \$10 million in total corporate entity sales (about 21 million dollars) and greater than 50 employees (company averages 97 employees).

Facility processes greater than 10 times the 100 pound threshold of the §313 chemical. Lead is considered a Persistent Bioaccumulative Toxin. The threshold was lowered to 100 pounds in 2001. (See attached)

(3) Circumstance Level 1 - Failure to file a Form R or Form A.

Proposed Penalty = \$32,500

Civil Monetary Penalty Inflation Adjustment Rules dated February 13, 2003 (69 Fed. Reg. 7121)

TOTAL PROPOSED PENALTY: \$97,500.

The United States Environmental Protection Agency (EPA) is authorized to issue a civil administrative complaint for the assessment of penalties for violations of the above cited regulation pursuant to Section 325(c) of EPCRA (42 U.S.C. §11045), and the Civil Monetary Penalty Inflation Adjustment Rules dated December 31, 1996 (61 Fed. Reg. 69359 (1996) and February 13, 2004 (69 Fed. Reg. 7,121). These provisions allow the assessment of civil penalties up to a statutory maximum penalty of \$32,500 for each violation of Section 313 of EPCRA. The determination of whether a penalty is to be imposed is based upon the nature, circumstances, extent and gravity of the violations alleged, as well as Respondent's history of prior violations, willfulness, ability to pay and degree of culpability.

During the compliance inspection and a review of the Respondent's financial information, as filed with the Commonwealth of Puerto Rico, EPA did not locate evidence suggesting a reduction for the ability to pay factor. EPA is aware that Respondent may present current financial information documents and may factor such consideration in reducing the penalty, if appropriate.

ATTACHMENTS:

1. Inspection report dated February 5, 2009
 2. January 27, 2009 email from The Battery Recycling Company
 3. List of Federal Notices pertaining to the TRI Lead and Lead Compounds Rule
 4. Draft Administrative Complaint
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