

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG.11
2012 APR 24 P 3 24
REGIONAL HEARING
CLERK

IN THE MATTER OF:

EPCRA-02-2011-4301

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

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

RESPONDENT

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

TO THE REGIONAL HEARING CLERK:

COMES NOW, The Battery Recycling Company, Inc. (“BRC” or “Respondent”), hereby represented by the undersigned attorney and respectfully states and prays:

On March 1st, 2011, the U.S. Environmental Protection Agency, Region 2 (“EPA” or the “Complainant”) issued a “*Complaint, Findings of Violation, Notice of Proposed Assessment of a Civil Penalty, and Notice of Opportunity to Request a Hearing*”. Subsequently, the EPA issued an “*Amended Complaint, Findings of Violation, Notice of Proposed Assessment of a Civil Penalty, and Notice of Opportunity to Request a Hearing*” (the “Complaint”). BRC submits this Answer following, for the most part, the same order of the Complaint. For those portions of the Answer that do not follow such order, Respondent shall clarify its response.

1. Paragraph 1 of the Complaint contains conclusions of law concerning 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”) and no factual allegations. Accordingly, no answer is required. If an answer would have been required, then the allegation is denied.

2. Paragraph 2 of the Complaint contains an assertion as Ms. Dore La Posta’s authority to institute this action. Respondent has no knowledge of whether such factual allegation is true. In accordance with 40 CFR §22.15(b), the allegations then deemed denied.

3. Paragraph 3 of the Complaint which identifies the Respondent is admitted.

4. Paragraph 4 of the Complaint which contains the physical address of Respondent is admitted.

5. Paragraphs 5, 6, 7, 8 and 9 of the Complaint contain statements as to several federal statutory and regulatory provisions and no factual allegations. Therefore, such allegations do not require a response from Respondent. If the allegations were to require a response from BRC, then they are denied.

6. Paragraph 10 of the Complaint which identifies the Respondent as a corporation organized pursuant to the laws of the Commonwealth of Puerto Rico is admitted.

7. Paragraph 11 is a conclusion of law and not a factual allegation. Accordingly, no answer is required. If an answer would have been required, then the allegation is denied.

8. Paragraph 12 is a conclusion of law and not a factual allegation. Accordingly, no answer is required. If an answer would have been required, then the allegation is denied.

9. Paragraph 13 is a conclusion of law and not a factual allegation. Accordingly, no answer is required. If an answer would have been required, then the allegation is denied.

10. The portion of paragraph 14 that asserts that the Respondent has 10 or more employees is admitted. The portion referring to certain regulatory provisions is not a factual

allegation and therefore does not require a response. If a response is required for such portion of the allegation, then is denied.

11. Paragraph 15 of the Complaint which states that Respondent's industrial operations fall within Standard Industrial Classification (SIC) Code 3692 is denied. BRC clarifies that its industrial operation are classified within SIC Code 3341 (Secondary Smelting and Refining of Nonferrous Metals).

12. Paragraph 16 of the Complaint which states that Respondent's Facility is in the North American Industry Classification System (NAICS) Code 423610 is denied. BRC clarifies that Respondent's industrial operations fall within NAICS Code 331492 (Secondary Smelting, Refining, and Alloying of Nonferrous Metal).

13. Paragraph 17 is a conclusion of law and not a factual allegation. Accordingly, no answer is required. If an answer would have been required, then the allegation is denied.

14. Paragraph 18 of the Complaint which states that on or about October 28, 2008, authorized representatives of EPA conducted an inspection of Respondent's Facility is admitted.

15. Paragraph 19 of the Complaint which states that on or about June 21, 2011 a request for additional information was issued by EPA, and that on July 14, 2011 Respondent provided additional information is admitted.

COUNT 1

16. Paragraph 20 of the Complaint re-alleges each allegation contained in paragraphs 1-19. Accordingly, Respondent's previous answers to such paragraphs are re-alleged and incorporated herein by reference.

17. Paragraph 21 of the Complaint is denied at this time for lack of information or belief. This allegation makes reference to findings and conclusions from EPA representatives during an inspection conducted on or about October 28, 2008.

18. Paragraph 22 of the Complaint which states that Lead is listed under 40 C.F.R. § 372.65 and 40 C.F.R. §372.28 is a conclusion of law and not a factual allegation. Accordingly, no answer is required. If an answer would have been required, then the allegation is denied.

19. Paragraph 23 of the Complaint which states that the established threshold amount for reporting the lead for the 2005 calendar year was 100 pounds is a conclusion of law and not a factual allegation. Accordingly, no answer is required. If an answer would have been required, then the allegation is denied.

20. Paragraph 24 of the Complaint which states that Respondent “processed”, as defined in 40 C.F.R. § 372.28, lead in quantities exceeding the established threshold for reporting during the 2005 calendar year is a conclusion of law and not a factual allegation. Accordingly, no answer is required. If an answer would have been required, then the allegation is denied.

21. Paragraph 25 of the Complaint is admitted.

22. Paragraph 26 of the Complaint is admitted. However, BRC affirmatively asserts that it submitted a complete and accurate Form R for lead for the 2005 calendar year in 2009.

23. Paragraph 27 of the Complaint is a conclusion of law and not a factual allegation. Accordingly, no answer is required. If an answer would have been required, then the allegation is denied.

COUNT 2

24. Paragraph 28 of the Complaint re-alleges each allegation contained in paragraphs 1-27. Accordingly, Respondent's previous answers to such paragraphs are re-alleged and incorporated herein by reference.

25. Paragraph 29 of the Complaint is denied at this time for lack of information or belief. This allegation makes reference to findings and conclusions from EPA representatives during an inspection conducted on or about October 28, 2008.

26. Paragraph 30 of the Complaint which states Lead is listed under 40 C.F.R. §372.65 and 40 C.F.R. §372.28 is a conclusion of law and not a factual allegation. Accordingly, no answer is required. If an answer would have been required, then the allegation is denied.

27. Paragraph 31 of the Complaint which states that the established threshold amount for reporting the lead for the 2006 calendar year was 100 pounds [40 C.F.R. §372.28] is a conclusion of law and not a factual allegation. Accordingly, no answer is required. If an answer would have been required, then the allegation is denied.

28. Paragraph 32 of the Complaint which states that Respondent "processed", as defined in 40 C.F.R. § 372.28, lead in quantities exceeding the established threshold for reporting during the 2006 calendar year is a conclusion of law and not a factual allegation. Accordingly, no answer is required. If an answer would have been required, then the allegation is denied.

29. Paragraph 33 of the Complaint is admitted.

30. Paragraph 34 of the Complaint is admitted. However, BRC affirmatively asserts that it submitted a complete and accurate Form R for lead for the 2006 calendar year in 2009.

31. Paragraph 35 of the Complaint is a conclusion of law and not a factual allegation. Accordingly, no answer is required. If an answer would have been required, then the allegation is denied.

COUNT 3

32. Paragraph 36 of the Complaint re-alleges each allegation contained in paragraphs 1-35. Accordingly, Respondent's previous answers to such paragraphs are re-alleged and incorporated herein by reference.

33. Paragraph 37 of the Complaint is denied at this time for lack of information or belief. This allegation makes reference to findings and conclusions from EPA representatives during an inspection conducted on or about October 28, 2008.

34. Paragraph 38 of the Complaint which states that Lead is listed under 40 C.F.R. § 372.65 and 40 C.F.R. § 372.28 is a conclusion of law and not a factual allegation. Accordingly, no answer is required. If an answer would have been required, then the allegation is denied.

35. Paragraph 39 of the Complaint which states that the established threshold amount for reporting the lead for the 2007 calendar year was 100 pounds [40 C.F.R. §372.28] is a conclusion of law and not a factual allegation. Accordingly, no answer is required. If an answer would have been required, then the allegation is denied.

36. Paragraph 40 of the Complaint which states that Respondent "processed", as defined in 40 C.F.R. §372.28, lead in quantities exceeding the established threshold for reporting during the 2007 calendar year is a conclusion of law and not a factual allegation. Accordingly, no answer is required. If an answer would have been required, then the allegation is denied.

37. Paragraph 41 of the Complaint is admitted.

38. Paragraph 42 of the Complaint is admitted. However, BRC affirmatively asserts that it submitted a complete and accurate Form R for lead for the 2007 calendar year in 2009.

39. Paragraph 43 of the Complaint is a conclusion of law and not a factual allegation. Accordingly, no answer is required. If an answer would have been required, then the allegation is denied.

COUNT 4

40. Paragraph 44 of the Complaint re-alleges each allegation contained in paragraphs 1-43. Accordingly, Respondent's previous answers to such paragraphs are re-alleged and incorporated herein by reference.

41. Paragraph 45 of the Complaint is denied at this time for lack of information or belief. This allegation makes reference to findings and conclusions from EPA representatives during an inspection conducted on or about October 28, 2008.

42. Paragraph 46 of the Complaint which states antimony is listed under 40 C.F.R. § 372.65 and 40 C.F.R. §372.28 is a conclusion of law and not a factual allegation. Accordingly, no answer is required. If an answer would have been required, then the allegation is denied.

43. Paragraph 47 of the Complaint which states that the established threshold amount for reporting antimony or antimony compounds for the 2006 calendar year was 25,000 pounds [40 C.F.R. § 372.28] is a conclusion of law and not a factual allegation. Accordingly, no answer is required. If an answer would have been required, then the allegation is denied.

44. Paragraph 48 of the Complaint which states that Respondent "processed", as defined in 40 C.F.R. § 372.28, antimony or antimony compounds in quantities exceeding the established threshold for reporting during the 2006 calendar year is a conclusion of law and not a

factual allegation. Accordingly, no answer is required. If an answer would have been required, then the allegation is denied.

45. Paragraph 49 of the Complaint is admitted.

46. Paragraph 50 of the Complaint is admitted. However, BRC affirmatively asserts that it submitted a complete and accurate Form R for antimony for the 2006 calendar year in 2011.

47. Paragraph 51 of the Complaint is a conclusion of law and not a factual allegation. Accordingly, no answer is required. If an answer would have been required, then the allegation is denied.

COUNT 5

48. Paragraph 52 of the Complaint re-alleges each allegation contained in paragraphs 1-51. Accordingly, Respondent's previous answers to such paragraphs are re-alleged and incorporated herein by reference.

49. Paragraph 53 of the Complaint is denied at this time for lack of information or belief. This allegation makes reference to findings and conclusions from EPA representatives during an inspection conducted on or about October 28, 2008.

50. Paragraph 54 of the Complaint which states antimony is listed under 40 C.F.R. § 372.65 and 40 C.F.R. §372.28 is a conclusion of law and not a factual allegation. Accordingly, no answer is required. If an answer would have been required, then the allegation is denied.

51. Paragraph 55 of the Complaint which states that the established threshold amount for reporting antimony or antimony compounds for the 2006 calendar year was 25,000 pounds [40 C.F.R. §372.28] is a conclusion of law and not a factual allegation. Accordingly, no answer is required. If an answer would have been required, then the allegation is denied.

52. Paragraph 56 of the Complaint which states that Respondent “processed”, as defined in 40 C.F.R. §372.28, antimony or antimony compounds in quantities exceeding the established threshold for reporting during the 2007 calendar year is a conclusion of law and not a factual allegation. Accordingly, no answer is required. If an answer would have been required, then the allegation is denied.

53. Paragraph 57 of the Complaint is admitted.

54. Paragraph 58 of the Complaint is admitted. However, BRC affirmatively asserts that it submitted a complete and accurate Form R for antimony for the 2007 calendar year in 2010.

55. Paragraph 59 of the Complaint is a conclusion of law and not a factual allegation. Accordingly, no answer is required. If an answer would have been required, then the allegation is denied.

COUNT 6

56. Paragraph 60 of the Complaint re-alleges each allegation contained in paragraphs 1-59. Accordingly, Respondent’s previous answers to such paragraphs are re-alleged and incorporated herein by reference.

57. Paragraph 61 of the Complaint is admitted.

58. Paragraph 62 of the Complaint is admitted.

59. Paragraph 63 is admitted in part and denied in part. BRC admits that during the 2008 calendar year it had transfers of wastewater sludge which may have contained small concentrations of lead to an offsite location, a sanitary landfill operated by Allied Waste of Ponce, Inc. at 500 Municipal Rd, La Cotorra, Ponce, Puerto Rico. The other assertions contained in this paragraph are denied for lack of knowledge or information.

60. Paragraph 64 of the Complaint contains a general citation or re-statement of Section 372(b)(15), therefore does not require a response from BRC. If this allegation were to require a response from BRC, then it is denied.

61. Paragraph 65 of the Complaint is admitted.

62. Paragraph 66 of the Complaint is admitted. BRC affirmatively asserts that by July 1, 2009, there was no sufficient information to estimate the amount of lead transferred to an offsite location (sanitary landfill operated by Allied Waste of Ponce, Inc. at 500 Municipal Rd, La Cotorra, Ponce, Puerto Rico). However, BRC is currently assessing this material in order to make an accurate estimate of the amount of chemical transferred to an offsite location. All relevant reporting forms will be amended accordingly.

63. Paragraph 67 of the Complaint is a conclusion of law and not a factual allegation. Accordingly, no answer is required. If an answer would have been required, then the allegation is denied.

COUNT 7

64. Paragraph 68 of the Complaint re-alleges each allegation contained in paragraphs 1-67. Accordingly, Respondent's previous answers to such paragraphs are re-alleged and incorporated herein by reference.

65. Paragraph 69 of the Complaint is admitted.

66. Paragraph 70 of the Complaint is admitted.

67. Paragraph 71 is admitted in part and denied in part. BRC admits that during the 2008 calendar year it had transfers of wastewater sludge which may have contained small concentrations of lead to an offsite location, a sanitary landfill operated by Allied Waste of

Ponce, Inc. at 500 Municipal Rd, La Cotorra, Ponce, Puerto Rico. The other assertions contained in this paragraph are denied for lack of knowledge or information.

68. Paragraph 72 of the Complaint contains a general citation or re-statement of Section 372.85(b)(15), therefore does not require a response from BRC. If this allegation were to require a response from BRC, then it is admitted.

69. Paragraph 73 of the Complaint is admitted.

70. Paragraph 74 of the Complaint is admitted. BRC affirmatively asserts that by July 1, 2010, there was no sufficient information to estimate the amount of lead transferred to an offsite location (a sanitary landfill operated by Allied Waste of Ponce, Inc. at 500 Municipal Rd, La Cotorra, Ponce, Puerto Rico). However, BRC is currently assessing this material in order to make an accurate estimate of the amount of chemical transferred to an offsite location. All relevant reporting forms will be amended accordingly.

71. Paragraph 75 of the Complaint is a conclusion of law and not a factual allegation. Accordingly, no answer is required. If an answer would have been required, then the allegation is denied.

PROPOSED CIVIL PENALTY

This entire section is denied. Respondent hereby incorporates by reference all applicable averments submitted in the answers provided in the sections above. BRC asserts that the proposed civil penalty does not proceed or is inappropriate. Alternatively, the proposed civil penalty is excessive and in violation of BRC's due process rights under Amendment V of the Constitution of the United States, and of section 558(b) of the Administrative Procedure Act, 5 U.S.C. §558(b). The factual analysis used to establish the proposed civil penalty for the alleged violations fails adequately take into consideration the nature, circumstances, degree of

seriousness of the alleged violations, degree of actual threat to human health or the environment, BRC's good faith efforts to cooperate with EPA, BRC's size and the economic hardship endured by Respondent or its ability to pay any penalties. BRC is a family and minority owned small business that provides an invaluable public service to Puerto Rico, as it offers a solution to the historical problems resulting from the gross mismanagement of used lead car batteries. BRC also provides more than 100 direct and 450 indirect jobs in an area of Puerto Rico that has been severely affected by the economic downturn.

In addition, BRC did not obtain any economic benefit from the alleged violations. All required measures have been implemented and all notification, filings and submittals have been prepared or are in process of being prepared. Moreover, the EPA seeks a penalty violation of \$205,000.00 without providing details on how the proposed penalty was calculated.

PROCEDURES GOVERNING THIS ADMINISTRATIVE LITIGATION

This section specifies the rules of procedure that will govern this civil administrative procedure, "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits", codified at 40 C.F.R. Part 22, which do not require an answer.

A. Answering the Complaint

BRC is hereby submitting its response to the Complaint with the intention of contending some of the facts of the Complaint and to demonstrate that the proposed penalty is inappropriate.

B. Opportunity to Request a Hearing

BRC hereby requests a formal hearing before an Administrative Law Judge pursuant to 40 C.F.R. § 22.15(c), and requests that every possible effort be made to conduct the hearing in Puerto Rico, since all the witnesses, documents and the site in question are located in Puerto

Rico. The purpose of the hearing is to contest the Complaint, the proposed penalty, and the matters of law and material facts that were not admitted above, and which were set forth in the Complaint. BRC's legal grounds for contesting the Complaint and the proposed penalty are set forth in this Answer and in the Affirmative Defenses listed below.

BRC reserves the right to amend or assert additional factual circumstances, arguments, and affirmative defenses that constitute the grounds for defense of the claims made in the Complaint, if and when such circumstances or arguments become known to BRC through discovery or other means. In addition, it reserves the right to modify its responses if additional information is obtained that clarify any particular allegations of BRC or the Complainant.

B. Failure to Answer

This section does not require an answer.

C. Exhaustion of Administrative Remedies

This section does not require an answer.

INFORMAL SETTLEMENT CONFERENCE

BRC shall take the opportunity to hold an Informal Settlement Conference with the representative of the Complainant, Mr. Roberto M. Durango-Cohen, Office of the Regional Counsel, in order to comment on the charges made in the Complaint, and provide additional information relevant to the disposition of the matter, including: (1) actions BRC has taken to correct any or all of the violations alleged; (2) any information relevant to the Complaint's calculation of the proposed penalty; (3) the effect the proposed penalty will have on BRC's ability to continue business; and/or (4) any other special facts or circumstances BRC wishes to raise. Therefore, BRC hereby pursues and hereby request, simultaneously with the request for a hearing, an informal conference procedure.

RESOLUTION OF THIS PROCEEDING WITHOUT HEARING OR CONFERENCE

BRC has opted for submitting a response to the Complaint with the intention of contending some of the alleged facts and to demonstrate that the proposed penalty is inappropriate, and shall not pursue a resolution of this proceeding without exercising its right for a hearing or conference.

AFFIRMATIVE DEFENSES

1. On August 12, 2009, BRC submitted to EPA a Toxic Chemical Release Inventory Reporting Form R, EPA Form 9350-1 ("Form R") for lead for the 2004, 2005, 2006, 2007 and 2008 calendar years.

2. In July 2011, BRC submitted to EPA a Form R for antimony for the 2005, 2006, 2007 and 2008 calendar years.

3. BRC submitted a Form R for lead and antimony for the 2009 and 2010 calendar years in a timely fashion.

4. BRC has been available and open to correct reported data in Forms R.

5. Some of the reports or forms for which the Complaint alleges that were required to be submitted were not applicable or not required.

6. The proposed penalty is excessive, unreasonable, arbitrary and capricious, an abuse of discretion, unwarranted and contrary to law because the factual analysis used by Complainant to establish the proposed civil penalty for the alleged violations is erroneous and fails to take into consideration the nature, circumstances, degree of seriousness of the alleged violations, and degree of actual threat to human health or the environment, among other considerations. The proposed penalty also fails to consider Respondent's good faith efforts to cooperate with EPA, and to achieve compliance.

7. BRC respectfully understands that the Complaint and proposed penalty are contrary to law, arbitrary and capricious, an abuse of discretion and unwarranted. In the alternative, it is excessive and inconsistent with the criteria set forth in the EPA's "Enforcement Response Policy for Section 313 of EPCRA," dated April 12, 2001.

WHEREFORE, Respondent respectfully requests that the Complaint be dismissed and that the order assessing civil penalties be denied.

Respectfully submitted this 20th day of April, 2012.

TORO, COLON, MULLET, RIVERA
& SIFRE, P.S.C.
416 Ponce de Leon Avenue
Union Plaza, Suite 311
San Juan, Puerto Rico 00918
P.O. BOX 195383
San Juan, PR 00919-5383
Tel. (787) 751-8999 Fax (787) 763-7760



Carlos E. Colón-Franceschi, Esq.
ccf@tcmrslaw.com

CERTIFICATE OF SERVICE

I certify that that the foregoing Answer to the Complaint, dated April 20, 2012, was sent this day in the following manner to the addresses listed below:

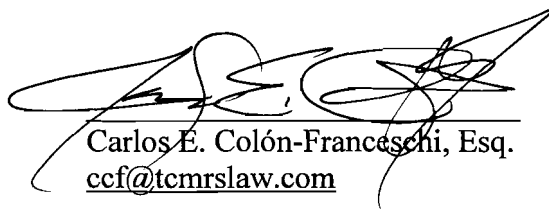
Original and one copy by Priority Mail
(certified mail with return receipt requested) to:

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

Copy by Regular Mail and Email to:

Roberto M. Durango-Cohen
Assistant Regional Counsel
Office of Regional Counsel-Caribbean Team
City View Plaza II
Suite 700 #48 RD. 165 Km 1.2,
Guaynabo, PR 00968-8069
Durango.Roberto@epamail.epa.gov

TORO, COLON, MULLET, RIVERA
& SIFRE, P.S.C.
416 Ponce de Leon Avenue
Union Plaza, Suite 311
San Juan, Puerto Rico 00918
P.O. BOX 195383
San Juan, PR 00919-5383
Tel. (787) 751-8999 Fax (787) 763-7760


Carlos E. Colón-Franceschi, Esq.
ccf@tcmrslaw.com

Date: 20/ April / 2012