



DRAFT

NOTICE OF OPEN MEETING

The meeting will also be streamed live from the Department's website at:
dnr.mo.gov/videos/live.htm.

DEPARTMENT OF NATURAL RESOURCES HAZARDOUS WASTE PROGRAM HAZARDOUS WASTE MANAGEMENT COMMISSION AGENDA

August 16, 2012

**Department of Natural Resources, Hazardous Waste Program
Bennett Springs/Roaring River Conference Rooms
1730 E. Elm Street
Jefferson City, MO 65102**

Note: Persons with disabilities requiring special services or accommodations to attend the meeting can make arrangements by calling the commission assistant at (573) 751-2747 or writing to the Hazardous Waste Program, P.O. Box 176, Jefferson City, MO 65102. Hearing impaired persons may contact the Hazardous Waste Program through Relay Missouri at 1-800-735-2966.

9:45 A.M. EXECUTIVE (CLOSED) SESSION

In accordance with Section 610.022 RSMo, this portion of the meeting may be closed by an affirmative vote of the Commission to discuss legal matters, causes of action or litigation as provided by Subsection 610.021(1). RSMo.

10:00 A.M. GENERAL (OPEN) SESSION

The General (Open) Session will begin promptly at 10:00 a.m., unless an Executive (Closed) Session has been requested; after which, the General Session will start as specified by the Commission's chairman.

Commissioner Roll Call

1. Pledge of Allegiance – Commissioners
2. Approval of Minutes – General (Open) Session, June 21, 2012 – Commissioners
Approval of Minutes – Executive (Closed) Session, June 21, 2012 - Commissioners

Information Only:

3. Updating Commission Operating Policies – Tim Eiken, Director’s Office - HWP
4. Battery Storage Trailer Parking Issue – Commission Inquiry Response – Darleen Groner, Permits Section, HWP
5. Tanks Update – HWP
 - FY12 Outputs – Ken Koon
 - Special Projects – Ken Koon
 - Energy Policy Act – Heather Peters
6. Rulemaking Update – Tim Eiken, Rule Coordinator – HWP
7. Pesticide Collection Events – Ricardo Jones, Compliance & Enforcement Section, HWP
8. Tanks Risk Based Corrective Action Rule Development Update – Leanne Tippett Mosby, Deputy Director, DNR
9. Quarterly Report – Dee Goss, Public Information Officer, HWP
10. Legal Update – Kara Valentine, Commission Counsel
11. Public Inquiries or Issues – David J. Lamb, Director, HWP
12. Other Business – David J. Lamb, Director, HWP
13. Future Meetings
 - Thursday, October 18, 2012 – to be held at the Bennett Springs/Roaring River Conference Rooms, 1730 E. Elm Street Conference Center, Jefferson City, MO

Adjournment

**MISSOURI DEPARTMENT OF NATURAL RESOURCES
HAZARDOUS WASTE MANAGEMENT COMMISSION**

Meeting Date: August 16, 2012

ROLL CALL ROSTER

	In Person:	By Phone:	Absent
Chairman Michael Foresman	_____	_____	_____
Vice-Chair Andrew Bracker	_____	_____	_____
Commissioner Elizabeth Aull	_____	_____	_____
Commissioner Jamie Frakes	_____	_____	_____
Commissioner Charles Adams	_____	_____	_____
Commissioner Deron Sugg	_____	_____	_____

Missouri Hazardous Waste Management Commission Meeting

August 16, 2012

Agenda Item # 1

Pledge of Allegiance

Missouri Hazardous Waste Management Commission Meeting

**August 16, 2012
Agenda Item # 2**

Approval of Minutes – April 19, 2011, Meeting

Issue:

Commission to review the General Session minutes from the June 21, 2012, Hazardous Waste Management Commission meeting.

Recommended Action:

Commission to approve the General Session minutes from the June 21, 2012, Hazardous Waste Management Commission meeting.

EXECUTIVE

SESSION

MEETING

MINUTES

GENERAL

SESSION

MEETING

MINUTES

GENERAL SESSION
HAZARDOUS WASTE MANAGEMENT COMMISSION
June 21, 2012; 10:00 A.M.
1730 E. Elm Street
Bennett Springs/Roaring River Conference Rooms
Jefferson City, MO 65102

(Note: *The minutes taken at Hazardous Waste Management Commission proceedings are just that, minutes, and are not verbatim records of the meeting. Consequently, the minutes are not intended to be and are not a word-for-word transcription.*)

The meeting was streamed live from the Department's website at: dnr.mo.gov/videos/live.htm.

COMMISSIONERS PRESENT IN PERSON

Chairman Jamie Frakes
Vice-Chairman Andrew Bracker
Commissioner Elizabeth Aull
Commissioner Deron Sugg

COMMISSIONERS PRESENT BY PHONE

No Commissioners participated by phone for this meeting.

Chairman Frakes called the General Session to order at approximately 09:50 a.m.

Vice-Chairman Bracker made a motion to go in to Executive Session. The motion was seconded by Commissioner Aull.

A vote was taken; all were in favor, none opposed. Motion carried.

The General Session was called to order at 10:00 a.m.

A roll call was taken of the Commissioners. Chairman Frakes, Vice Chairman Bracker, Commissioner Aull, and Commissioner Sugg were present in person.

1. PLEDGE OF ALLEGIANCE

Commissioner Aull led the Pledge of Allegiance, and it was recited by the Hazardous Waste Management Commission (Commission) and guests.

2. APPROVAL OF MINUTES

- Executive Session minutes from the April 19, 2012, meeting:

Commissioner Sugg made a motion to approve the April 19, 2012, General Session minutes. Commissioner Aull seconded the motion.

A vote was taken; all were in favor, none opposed. Motion carried. Minutes were approved.

3. ELECTION OF OFFICERS

Chairman Frakes addressed the Commission and the audience and advised that he was honored to have been given the opportunity to serve as Commission Chairman. He advised that he looked forward to continuing to serve with the Commission. The floor was opened to nominations.

Commissioner Aull nominated Commissioner Foresman for the position of Commission Chairman. The nomination was seconded by Vice Chairman Bracker.

A vote was taken; all were in favor, none opposed. Nomination carried.

Commissioner Aull nominated Vice Chairman Bracker for the position of Commission Vice Chairman. The nomination was seconded by Commissioner Sugg.

A vote was taken; all were in favor, none opposed. Nomination carried.

Vice-Chairman Bracker took over officiating the meeting following the elections.

4. UPDATING COMMISSION OPERATING POLICIES

Mr. Tim Eiken, Rules Coordinator, HWP, addressed the Commission, and gave a brief overview of the current operating procedures and highlighted issues that the Commission may wish to review. Mr. Eiken advised that this was an opportunity for the Commission to review those policies already in place and make suggestions regarding things that may need to be included in future versions. Mr. Eiken noted that the current procedures had been developed in 2004 and that this was an opportunity to update information that has changed. Mr. Eiken advised that there were at least two parts that needed to be changed because the statutes regarding them had changed; the Administrative Hearing Commission appeals process and the Regulatory Impact Report structure. Mr. Eiken mentioned that review of this document had been precipitated by issues raised at a recent meeting regarding the amount of notice needed to be given for presentations before the Commission.

Mr. Eiken went on to note that this was a Commission document and that it was being reviewed as an opportunity for current input, to address issues the Commission felt were pertinent. He advised that some of areas that he had focused on, as items that may need updating, were suggestions only and were not required. Mr. Eiken directed the Commissions attention to item #6 in the Operating Policy, regarding Agenda, and noted that it currently stated that the public has the right to address the Commission at the time of an agenda item. He went on to discuss that this had recently been left up to the discretion of the Commission, but that the current Procedures state that if someone wants to speak they can fill out a form requesting the time to address the Commission. Mr. Eiken also noted that there were no clear timeframes noted for submissions to the Commission, that the current Procedures were vague; and this issue, along with several other items, had made review of the current Operating Procedures relevant.

Mr. Eiken completed his overview and inquired if the Commission had any questions or any comments on any of the current policies.

Commissioner Bracker inquired as to how the Commission should consider changes. He suggested that the issue be discussed and that suggested changes be prepared for review at the next meeting. He also noted that he had one or two suggestions he would like to make but would like to provide the other Commission members the opportunity to speak first. When no other suggestions were made, Vice Chairman Bracker advised that there were several areas of the current policies that he would like to propose revisions for consideration.

1. Meeting Materials – a reasonable time period was needed for consideration of materials prior to a meeting.
2. Records – the livestream broadcast of the meetings needs to be added. Updated information regarding use of new technology.
3. Open Communications – Vice Chairman Bracker noted that interested members of the public have contacted Commission members outside of the meeting setting and he believed that the Commission may be in need of guidance as to how to address this issue. He advised that the business of the Commission needed to be conducted in an open forum setting. Vice Chairman Bracker proposed suggested language to address the issue:

“Commission members may receive comments and information from interested persons in compliance with Sunshine Law requirements when such information concerns the active and ongoing business of the Commission, or when such contact seeks to propose new action by the Commission. The Commission member should notify the Chair; or in the case of it being the Chair, they should notify the Vice-Chair, of the contact and communication, and should strongly encourage the interested person to participate in a public meeting or request an agenda item at a future meeting to more fully discuss the matter.”

Commissioner Sugg inquired as to whether this suggested language was to be in addition to current language or in replacement of. Vice Chairman Bracker advised his suggestions were to be in addition to current language. Commissioner Frakes inquired as to whether this was the exact language he wished to propose or whether it was just a concept. Vice Chairman Bracker replied that it was just a draft wording, a “straw man proposal for consideration.” Vice Chairman Bracker went on to advise that there was also a need to expand on the “Conflict of Interest” portion of the Procedures so the Commissioners were cognizant of the regulations regarding gratuities, etc. The Commission members were provided a copy of the Department’s current “Conduct & Ethics” policy for their review.

Commissioner Sugg advised that the Commission needed to take this opportunity to discuss all suggested language with Commission General Counsel, in an open meeting forum, allowing stakeholders and the public to comment. He advised that this needed to be an ongoing process with a review of the operating policies every two years.

Earlier in the discussion Commissioner Aull had suggested a motion regarding the frequency of reviews of the operating procedures. A formal motion was requested at this time, which stated:

“The Commission shall review the Operating Procedures on a biennial basis.”

The motion was seconded by Commissioner Frakes.

Commissioner Sugg inquired as to whether the Commission wished to expand on the motion to include a specific timeframe for this review.

Commissioner Aull amended her motion to include the June Commission meeting every other year.

“The Commission shall review the Operating Procedures on a biennial basis during the June meeting every other year.”

The amended motion was seconded by Commissioner Frakes.

A vote was taken; all were in favor, none opposed. Motion carried.

Commissioner Aull proposed Vice Chairman Bracker earlier motion language regarding Open Communications, which was restated by Vice Chairman Bracker. Commissioner Sugg inquired as to whether this motion was to adopt this language or incorporate it in to discussion for a future discussion with General Counsel. Commissioner Aull advised that her motion was to incorporate the motion language in to future discussions.

The motion was seconded by Commissioner Frakes.

A vote was taken; all were in favor, none opposed. Motion carried.

Vice Chairman Bracker returned the discussion to an earlier point of order that Commission Sugg had made; Commission Sugg made the following motion:

“I move that at the next meeting the Commission discuss these policies in total and that legal counsel be prepared to discuss the specific provisions including the Open Communications and the entire chapter on Communications, and to discuss the language proposed with any eye towards possibly revising or adopting a revised policy.”

The motion was seconded by Commissioner Frakes.

A vote was taken; all were in favor, none opposed. Motion carried.

Vice Chairman Bracker advised the Commission that he had received a public comment form requesting the opportunity to speak to the Commission, regarding this agenda item. He addressed Ms. Kara Valentine, Commission Counsel, inquiring if the current policies supported having someone speak at this time. Ms. Valentine advised that the request to speak could be honored at this time; but, in the future the Commission may wish to consider establishing a specific time period where public comments and input were accepted on an issue.

Mr. Kevin Perry was given the opportunity to address the Commission. Mr. Perry advised that he wished to discuss the two week pre-meeting deadline that had been brought up earlier regarding submissions to the Commission for upcoming meetings. He asked that the

Commission place the same restrictions on Department staff as were placed on the public with regards to these submissions. Mr. Perry also requested that some leeway be given by the Commission regarding limiting the timing of input on an agenda item as some things needed to be stated at the time the Commission was discussing a particular issue.

No other issues were raised by the Commission or public attendees on this agenda item.

5. BATTERY STORAGE TRAILER PARKING/EXIDE RESOLUTION FOLLOWUP

Ms. Kathy Flippin, Chief, Compliance and Enforcement Section – HWP, addressed the Commission and provided a brief background overview of the issue. Ms. Flippin advised the Commission that representatives from the U.S. Environmental Protection Agency, the Department of Transportation and from the Buick Recycling facility were available to respond to any inquires the Commission may have.

In response to inquiries posed by the Commission at the April meeting regarding the layout of the trailer parking areas at the other battery recycling facility in Missouri, Mr. Jim Lanzafame, Buick Recycling, addressed the Commission. Mr. Lanzafame provided the Commission with a PowerPoint presentation showing aerial photographs of the Buick Plant and a map of the facility. He provided the Commission with an overview of the Buick facilities process with regards to incoming shipments of spent batteries. Following his presentation the Commission posed several questions as to run off from their parking areas and how their facility ensures consistency from their driver/operators.

- The Commission inquired as to whether the language posed by Exide, at the April meeting, would be of any help to Buick or if they were having any issues with the current rule language.
 - Mr. Lanzafame responded that he had reviewed the language and that the time frames noted in the proposed language would assist them at times, in addition to assisting their customers. He noted a need for some flexibility and that he was supportive of the language regarding that issue.
- Commissioner Sugg asked that Mr. Lanzafame define the “flexibility” he was seeking.
 - Mr. Lanzafame advised that longer staging times would be beneficial in the event of inclement weather, plant outages, etc.
- Commissioner Sugg inquired as to what percent of their incoming loads contain leaking batteries.
 - Mr. Lanzafame responded that he was not sure of that number, but that their incoming loads had scheduled arrival times and if a problem is found upon entry to the plant area, trucks with noted issues were moved to the front of the line to process immediately.
- Commissioner Aull inquired as to whether their truck waiting area was within the permitted area of the plant.
 - Mr. Lanzafame advised that it was inside the fence.
- Commissioner Aull again inquired as to whether it was inside their facility area.

- Mr. Lanzafame responded that it was not inside the facility area, that until the truck crossed the gated area, it was not in the plant's possession or under their control.
- Commissioner Aull inquired as to how long the trucks were parked on the lots outside of their plant area.
 - Mr. Lanzafame responded that he did not have a definitive answer, that the plant accepted trucks from late Sunday till late Friday, that they try to move them through quickly, operating 24 hours a day during that time.

No other questions were posed to Mr. Lanzafame and the Commission thanked him for coming and speaking to them on the issue.

Mr. Jim Aycock, U.S. Environmental Protection Agency, was introduced to the Commission and provided them with their position on the proposed rule language. He noted that the EPA had reviewed the proposed language and had provided the Department with a letter in response, advising the Department that the language, if adopted, would be less stringent than current Federal regulations. He advised that the facility already has a permit to store the batteries once they arrive, and that there was special language in that permit that they would have to comply with. He noted that a permitted facility had to comply with the regulations. He noted that none of the regulations governing them would allow storage of leaking batteries for any period of time. Mr. Aycock went on to explain that the EPA had looked at the issue of "when delivered." He noted that there were two guidance documents that were provided for the Commission to look at. He advised that these outlined that when the transportation phase stops, permit compliance begins.

Commissioner Sugg stated that all parties concerned were aware of what the problem was; the issue was that if a load could not be processed immediately, for whatever reason, the trucks could be put back on the road. He inquired as to what the EPA suggested that the Commission could do to address that immediate issue. Mr. Aycock advised that it was a tough question and he did not have an answer at that time. Commissioner Aull inquired as to what interaction there was with the Department of Transportation on this issue, to which Mr. Aycock advised there was nothing at this time, as there were other associated issues.

Vice Chairman Bracker reaffirmed his previous need to recuse himself on this issue. Due to this, Mr. Jim Price, Exide Counsel, noted that there was not a quorum present under those conditions and asked the Commission to table further discussion until there was a quorum present. Vice Chairman Bracker inquired of Ms. Kara Valentine, Commission Counsel, if a recusal created the absence of a quorum. Ms. Valentine responded that it did not cause the lack of a quorum; she noted that there was a quorum present even if one of the Commissioners had recused themselves from voting on an issue.

Mr. Price was officially introduced and given an opportunity to address the Commission. He advised the Commission members that he understood the Commission's earlier admonishment regarding providing materials to the Commission a reasonable amount of time prior to the meetings, but that he had a couple of handouts he wished to provide as he would be speaking

to them regarding the contents of the handouts. Mr. Price began by handing out a copy of a letter from the US EPA, Region 5, dated February 14, 2002, addressed to the Indiana Department of Environmental Management. He read the provisions in the letter to the Commission and advised them that the state of Indiana was getting ready to address the issue in question. In addition, Mr. Price provided the Commission with copies of a fact sheet, also from Indiana, on the same topic. He noted that the regulation was still in process and had not been adopted yet, but advised that the letter noted it was consistent with federal laws.

Mr. Price advised the Commission that no one was asking to be able to bring in dramatically leaking batteries, but was requesting flexibility in addressing the issue when or if it occurs. He also advised that an option for them may be to change the trailer parking area to an area that was outside of the permitted area.

Mr. Price stated that he would like the EPA to further define when a trailer is "accepted." He noted that he was just asking the Commission to start a process, stating that it may lead to somewhere totally different than the language he had proposed. He advised that he believed that all parties agreed that having trucks inside the gates in a controlled environment was safer than the alternative and asked that enforcement discretion be added to the language he had proposed.

Mr. Price concluded his presentation and was available for inquiries from the Commission. Commissioner Frakes began by noting that the document Mr. Price had provided allowed for a 14 day window for trailers, although he had previously testified that the facility processed the trailers as soon as possible. Commissioner Frakes stated that he did not want this to become a "de facto parking area," and inquired as to the surface of the parking area. Mr. Price responded that the surface will be asphalt and that they did not expect vehicles to be held there for 10-14 days, just a reasonable amount of time. Commissioner Sugg inquired as to the date on the Indiana document to which Mr. Price responded that the document was a policy that Indiana had adopted in an effort to be flexible and that it had been vetted by the EPA in the permit. Commissioner Sugg inquired as to whether the letter represented current practice, to which Mr. Price advised that it was what was being done at this time and that they were currently trying to formalize it in regulation. Commissioner Sugg asked if language would help that spelled out a specific timeframe for the initial inspection. Mr. Price responded that an external inspection practice was in place now and until the last permit change, the truck was not opened until ready to off load. Commissioner Aull inquired as to when this regulation was enacted in Indiana, to which Mr. Price responded that it was still in process and had not been enacted yet. Commissioner Aull went on to enquire if their contact in Indiana was still current. Mr. Price responded that the permit writer for Indiana was Ruth Gean, and he had spoken to her recently.

Ms. Kathy Flippin addressed the Commission following Mr. Price's presentation and advised the Commission that the Department had prepared some draft motion language for their consideration, regarding this issue. She went on to state that the Department had reviewed the Indiana documents and reiterated that they did state "whole lead acid batteries," which were "compliant with container laws" and "must be intact and not leaking." Ms. Flippin read the two motions to the Commission:

Motion #1:

"I move that the Commission, having heard testimony and reviewed data provided by all parties having presented before this Commission, direct the Department to continue to enforce the current state regulations and the conditions of the Exide facility permit and not develop modified regulations as suggested by the Exide resolution presented to the Commission on April 19, 2012."

Motion #2:

"I move that the Commission, having heard testimony and reviewed the data provided by all parties having presented before this Commission, direct the Department to develop, present, and propose a package of regulations substantially in the form of those presented in the Exide resolution that was provided to the Commission on April 19, 2012, in compliance with the public notice, comment, and other requirements for adopting regulations under the Missouri Hazardous Waste Management Law."

Ms. Flippin advised the Commission that the Department supported the language in Motion #1 and reiterated that recently passed legislation would require the Department to review all rules and regulations to ensure they were no stricter than current federal regulations. Therefore, the state could not agree to any provisions that were less strict than current federal guidelines.

Commissioner Sugg noted that it may be appropriate for Ms. Kara Valentine, Commission Counsel, to comment on whether there were enough Commission members present to vote on any motion language. Ms. Valentine advised that she would need to take a break to look at the law on the issue.

Vice Chairman Bracker called for a 10 minute break at 11:42 a.m.

Vice Chairman Bracker called the meeting to order at 11:52 a.m.

Vice Chairman Bracker announced that the Commission needed to go in to Executive Session to confer with Counsel. Commissioner Sugg made the motion to go into Executive Session at 11:59. The motion was seconded by Commissioner Frakes.

A vote was taken; all were in favor, none opposed. Motion carried.

The General Session was called back to order at 12:03 p.m.

Vice Chairman Bracker requested that Ms. Valentine provide the audience with the information she had found on what would constitute a quorum. Ms. Valentine stated that the Commission was supposed to be made up of seven members, making four members qualify as a quorum. But, she noted, the law does not address the issue of a recusal. She advised that since this issue was already before the Commission on an appeal from a different venue, it was recommended that there be no vote on the issue at this meeting.

Vice Chairman Bracker made the motion to table the issue until the next meeting. He asked if there was any discussion on the motion.

Commissioner Sugg addressed the Commission and the audience and stated that the issue has been discussed at length, and that this was an opportunity for all parties to participate in coming up with a good law. He noted that he did not believe that either suggested motion language was good and he hoped to see different language for the Commission to consider.

Vice Chairman Bracker repeated his motion to table the discussion until the following meeting. Commissioner Aull seconded the motion.

A vote was taken; all were in favor, none opposed. Motion carried.

Commissioner Aull proposed a motion to direct Department staff to look in to the Indiana rule so that the Commission could understand what Indiana was seeking to do with the rule, expound on the federal requirements that were cited in the document and determine how or if it had actually been adopted. Commissioner Frakes seconded the motion.

A vote was taken; all were in favor, none opposed. Motion carried.

Due to the time, Vice Chairman Bracker moved to Agenda Item #9, as the presenter had other commitments later in the afternoon.

9. TANKS RISK BASED CORRECTIVE ACTION RULE DEVELOPMENT UPDATE

Ms. Leanne Tippett Mosby, Deputy Department Director, addressed the Commission and provided the Commission with an overview of the current rulemaking process, noting the timeline of the RBCA process, the extension granted by the Commission, discussion with PSTIF and MPCA, and noted the cancellation of the June 15th Tanks RBCA Workgroup meeting. She noted that the Department hoped to stay on track, that there was a meeting scheduled for August 15th, and that an additional meeting could be added if needed. Ms. Tippett Mosby outlined to the Commission where language was being incorporated in to the rule, the sunset dates that would be added and which rules this would cover and which ones it would not. She also noted that there was a significant difference in the EPA's final Vapor Intrusion Guidance over the draft versions, with differences in the target levels effecting the Department's draft document.

Commissioner Aull inquired as to whether the Department would have something for the Commission to review by the December meeting; Ms. Tippett Mosby responded that she would continue to provide updates of information as it was completed.

Vice Chairman Bracker stated that he was curious that staff has had the draft guidance and that this federal guidance would have such an impact on state rulemaking. He noted that we were not adopting the federal rules, just using the guidance, an inquired as to whether a final rule could be developed to include this guidance. Ms. Tippett Mosby responded that she believed so.

Vice Chairman Bracker asked if the stakeholder group would be addressing the guidance. Ms. Tippet Mosby responded that the stakeholder group itself was a larger group, that it was more diverse, and that the subcommittees were working with the technical issues to bring back to the larger group. Vice Chairman Bracker inquired as to when this subgroup would be reporting to the larger group. Ms. Tippet Mosby responded that it was scheduled to occur in the fall of 2012. She noted that there was a lot to be done within a very tight timeframe, and that the Department was very aware of the schedule. Vice Chairman Bracker advised that he encouraged an additional meeting if needed.

Commissioner Sugg inquired as to whether, other than the Vapor Intrusion, there were any other changes being discussed. Ms. Tippet Mosby responded that the Department was working on how the guidance matched up with the rule. She noted that there were still issues where the PSTIF, the MPCA, and the Department do not agree and that efforts were still being made to come to an agreement. Commissioner Sugg inquired as to whether discussions with the stakeholder groups were still ongoing. Ms. Tippet Mosby responded affirmatively, on many levels.

Vice Chairman Bracker inquired as to whether HB1251 affected the Tanks RBCA rule development. Ms. Tippet Mosby advised that it did not. She noted that it may have affected it with the original language, but that the Department had been able to incorporate language to address those areas.

No other questions were posed by the Commission. This was provided as information only and required no action on the part of the Commission.

6. LEGISLATIVE UPDATE

Mr. Time Eiken, Rules Coordinator, HWP, addressed the Commission and provided a PowerPoint presentation outlining the impacts of HB1251, which was recently passed. He noted that the bill covered 5 topics which impacted the Hazardous Waste Program. These included:

- Limit on rulemaking authority – the no stricter than federal rules;
- Required a review of existing rules to determine where or if they were stricter than federal rules;
- Required a review of existing rules every 5 years to determine if they were still pertinent;
- Made changes to the Radioactive Transport Fees, changing the fees assessed from “per cask” to “per load”, which decreased the fees the Department charged;
- And, changed the timeframes on appeals before the Administrative Hearing Commission – although this would have no adverse consequences for the Department.

Mr. Eiken noted that the bill was still unsigned by the Governor, although a final decision was expected by mid-July.

Vice Chairman Bracker inquired as to the definition of “stricter,” and asked if there was a legal definition or guidance. Mr. Eiken responded that the wording included “no stricter than

or sooner than,” that there was some general guidance available; but, there were a lot of grey areas. He noted that the Department had begun looking at current rules to determine where they would be affected.

Ms. Kara Valentine, Commission Counsel, advised the Commission that the Air Program has had “no stricter than” provision in place for awhile. She noted that if the “feds” have not acted on an issue the state can fill in the gaps.

Commissioner Sugg inquired as to what “no sooner than” meant. Mr. Eiken advised that it provided for areas where state statutes have authority.

Vice Chairman Bracker expressed concern for the workload that this would create. Mr. Eiken advised that it would be substantial, that it was more of determining what we could keep, rather than a wholesale rewrite. Vice Chairman Bracker inquired as to whether this had been discussed in stakeholder meetings, whether the public was aware of this impact. Mr. Eiken advised that the stakeholder groups would be kept updated and would be advised of the overall impact as soon as we were aware of all the implications.

No other questions were posed by the Commission. This was provided as information only and required no action on the part of the Commission.

7. RULEMAKING UPDATE

Mr. Time Eiken, Rules Coordinator, HWP, addressed the Commission and advised that everything was currently on hold awaiting the Governors decision on the bills that had passed. He advised the Commission that he would be providing new federal updates in the future.

This was provided as information only and required no action on the part of the Commission.

8. TANKS FINANCIAL RESPONSIBILITY DIRECT REFERRAL UPDATE

Ms. Angela Oravetz, Compliance and Enforcement Section, HWP, addressed the Commission and provided a PowerPoint presentation on the current Tanks Financial Responsibility (FR) Direct Referral process. She advised that the HWP was continuing with the expedited process that the Commission had approved and provided the Commission with updated numbers on the compliance and referral process. She noted that the expedited process was working and that the Department hoped that the Commission would continue to approve it in the future.

This was provided as information only and required no action on the part of the Commission.

9. LEGAL UPDATE

Ms. Kara Valentine, Commission Counsel, addressed the Commission and noted that this was a standing agenda item to provide the Commission with information on pending legal issues

that may be of interest and any appeals currently before the Administrative Hearing Commission (AHC). She discussed the penalty process to provide them with an overview of how the penalties were determined and advised that that the only appeal left before the AHC had been withdrawn. She noted that she would address the Commission at future meetings when issues arose.

This was provided as information only and required no action on the part of the Commission.

10. PUBLIC INQUIRIES OR ISSUES

Mr. Jim Belcher, Chief, Brownfield Voluntary Cleanup Section, Hazardous Waste Program, addressed the Commission and noted that a request had been received from Mr. Ron Leone, to address the Commission. He noted that an additional request had been received from Ms. Carol Eighmey, who would be heard following Mr. Leone.

Mr. Ron Leone, Executive Director, Missouri Petroleum Marketers & Convenience Store Association, addressed the Commission and made a brief statement to the Commission regarding the Operating Policies. He advised that he believed that any restrictions on the amount of pre-submission time that was given for presentations should apply to the Department as well as any concerned public. He advised that without this equity, the Commission receives 95% of the Department's views vs 5% of the public views, as the Department had unlimited access to the Commission.

Ms. Carol Eighmey, Executive Director, Petroleum Storage Tank Insurance Fund, addressed the Commission and briefly noted that she concurred with Ms. Oravetz's presentation and noted that the Department does a great job of enforcing Financial Responsibility (FR). She noted that it was of great importance and that Missouri has done a "bang up" job of avoiding the problems that lack of FR creates. On a different topic, Ms. Eighmey advised that she wished to add additional information to what the Commission had received on the issue of the Tanks RBCA efforts. She noted that the Vapor Intrusion was being dealt with effectively, that the standards are protective. She noted that Commission Sugg had inquired earlier if there were other requirements being considered. Ms. Eighmey advised that there were some important issues. She noted that she would like to see a list of what was wrong with current language. She advised that she was not clear where Department staff were trying to incorporate these changes; in the guidance document to be referenced in the rule or language in the actual rule? She advised that the PSTIF had drafted a list of issues that they perceive were valid and had received no response. She also noted that the opportunities to resolve these issues were limited, that there have been high level discussions. She reiterated that she would like to see a list of what the Department thinks is wrong with the current requirements.

Vice Chairman Bracker noted that there was an ongoing stakeholder process and inquired as to whether PSTIF was participating. Ms. Eighmey advised that they were and were continuing to ask questions.

This was provided as information only and required no action on the part of the Commission.

11. OTHER BUSINESS

Mr. Jim Belcher, Chief, Brownfield Voluntary Cleanup Section, Hazardous Waste Program, noted that there were no other issues to be discussed at this time.

12. FUTURE MEETINGS

Vice Chairman Bracker noted that the next meeting was scheduled for August 16, 2012.

Commissioner Frakes made the motion to adjourn the meeting at 1:04 p.m. The motion was seconded by Commissioner Aull.

A vote was taken; all were in favor, none opposed. Motion carried.

Respectfully Submitted,

Debra D. Dobson, Commission Assistant

APPROVED

Andrew Bracker, Vice Chairman

Date

Missouri Hazardous Waste Management Commission Meeting

**August 16, 2012
Agenda Item # 3**

Updating Commission Operating Policies

Recommended Action:

Information Only.

Presented by:

Tim Eiken, Rules Coordinator, HWP

**Department of Natural Resources
Hazardous Waste Management Commission Operating Policies
September 30, 2004**

Draft – August 2012

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Purpose

Environmental statutes and regulations of the State of Missouri embody the goals of the people for protection of the environment and public health in a balanced manner consistent with economic growth. To achieve these goals, laws describe and assign powers and duties to the Department of Natural Resources and the environmental commissions and boards.

The operating policy set forth herein is intended to be adopted by the members of the Missouri Hazardous Waste Management Commission. The purpose of this policy is to promote a higher level of commission competence and independence, transparency and clarity in action, and predictability and consistency in processes, thus enhancing public trust and commission accountability. Throughout this document the term “commission” is understood to mean the Missouri Hazardous Waste Management Commission.

This document establishes an element of policy uniformity with the other boards and commissions in the Department of Natural Resources. The commission will review this policy on a biannual basis and modify, as necessary to conform with any changes to the statutes that give the commission its authority or as necessary to reflect changes in commission practice or procedure. The commission will review the policy at its regularly scheduled meeting in June of every other calendar year, beginning in 2012. This policy does not have the force and effect of law, and is not intended to set legally binding procedural rules

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Commission Structure

1. Authority and Powers

The Hazardous Waste Management Commission was established in 1977 by section 260.365 RSMo. The commission oversees the implementation of laws and regulations that provide for the safe management of hazardous wastes and substances to protect human health and the environment. Responsibilities carried out by the commission include:

- Categorizing hazardous waste
 - Designating which wastes may be disposed of through alternate technologies;
 - Regulating storage, treatment, disposal, transportation, containerization and labeling of hazardous waste
 - Regulating the issuance of licenses and permits
 - Granting variance requests
 - Conducting hearings and rulemaking
 - Deciding appeals and issuing orders
 - Promoting recycling, reuse and reduction of hazardous wastes
 - Updating a state hazardous waste management plan
- The commission has the power to acquire information and services useful for carrying out its responsibilities through obtaining independent technical or other professional support.

2. Members

The commission shall have seven members who are appointed by the Governor and confirmed by the Missouri Senate.

No more than four members shall belong to the same political party.

All members shall be representative of the general interest of the public and shall have an interest in and knowledge of waste management and its effects on human health and the environment.

- Three members, respectively, shall have knowledge of and may be employed in:
 - Agriculture
 - The waste generating industry
 - The waste management industry.

Members shall serve for four years and until their successors are selected and qualified. There is no limitation on the number of terms any appointed member may serve.

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Members shall be reimbursed for travel and other reasonable and necessary expenses incurred in the performance of their duties and shall receive fifty dollars per day for each day spent in performance of their duties at regular commission meetings.

A member may resign from the commission with written notice to the chair or applicable program director.

Any commission member absent from four consecutive regular commission meetings for any cause shall be deemed to have resigned.

The governor may remove any appointed member for cause.

- The governor may appoint a member for the remaining portion of the unexpired term created by a vacancy.

3. Officers

- The members shall annually select from among themselves a chairman and a vice chairman.
- The members shall annually select amongst themselves a chairman and a vice-chairman during the second calendar meeting of each calendar year. As a suggestion, it is recommended that the chairmanship/vice-chairmanship be rotated amongst willing candidates at least every two years.

4. Staff

- The Hazardous Waste Management Program provides the commission all necessary professional and administrative support the commission may require to carry out its powers and duties.
- The Attorney General's Office provides legal advice to the commission and acts as attorney for the commission

5. Meetings

The commission shall routinely meet at least four times a year, at times and places determined by the chair in consultation with staff and members of the commission. The commission intends to vary meeting locations and times to offer more opportunity for interested persons to attend.

The commission may hold special meetings as necessary to the timely performance of commission responsibilities. Special meetings may be called by three members upon written notice to each member of the commission.

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Issues may arise from time to time that are of interest to other commissions. In such instances, the commission may hold a joint meeting to discuss topics of mutual interest. Joint meetings may be called by the chairmen of the two commissions in consultation with each program director.

The commission may, from time to time, tour facilities or locations of interest. Tours will have an agenda as with any other meeting. Consideration must be given to providing access to the public during the tour.

The commission may hold working meetings, at which no decisions are made, to discuss topics pertaining to the commission.

Pursuant to the Missouri Sunshine Law, all meetings of the commission at which a quorum of the commission is present, other than social gatherings, shall be meetings open to the public.

The commission may hold closed sessions or meetings only in accordance with the procedures and exceptions provided in the Missouri Sunshine Law. The motion to close the meeting shall cite the specific statutory exception or exceptions under which the closed meeting is being held. The number of staff attending the closed meeting will be limited, the time spent in a closed meeting will be as brief as necessary and the discussion shall be limited to only the specific topic or topics for which the meeting was closed. Roll call votes will be taken to close a meeting.

After a closed meeting the commission should return to open session. The chair should state the general topic of the discussion held during the closed session.

6. Agendas

An agenda is a tool to organize a meeting, to notify members, staff, and any interested parties about topics to be discussed, and to assist in the orderly conduct of a meeting.

The agenda for each commission meeting will contain the following:

- Name of the commission

- Meeting time, date and location

- Notice that members of the public may ask to address any agenda item at the time it is discussed, together with instructions for signing a form or card to speak to an agenda item.

- A standing item to allow for public comment on any topic

- Items for consideration, brief, but clear as to the topic

- Anticipated action for each item such as: decision, no action-information only or further direction sought

- An item to discuss or set future agendas

- An item for future meetings

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If a meeting is to contain a closed session in accordance with the Sunshine Law, a statement of when the closed session will be held and when the open session will be held, whenever possible

Contact information for the commission and program, referencing how copies of materials provided to commission members in preparation for the meeting may be requested

Other agenda items as appropriate, such as legislative updates

Contact information for those with disabilities

Where possible, preliminary agendas should be developed and provided, with the statement that the agenda is preliminary and subject to change.

Agenda items shall generally be determined by the program director in consultation with the commission chair. Any commissioner or the public may request that an item be brought before the commission. Such requests should be received at least fourteen days before a meeting.

Agendas for any meeting will be posted according to the provisions of the Sunshine Law as well as posting on department and Office of Administration (if available) websites. Agendas will be routinely provided to stakeholders who have requested to be placed on a mailing list, or to anyone requesting an agenda.

7. Conduct of Meetings

Roberts Rules of Order will be followed for the orderly conduct of commission business and actions.

The work of the commission will be conducted with respect and courtesy toward the staff, interested parties and the public. Decision-making will reflect independence and impartiality.

Four of the members of the commission must appear in person or by electronic conference to constitute a quorum for the conduct of business. If there is no quorum, members may conduct a working meeting.

If a quorum is present, the affirmative vote of the majority of the members entitled to vote on the subject shall be the act of the commission.

The commission welcomes information and views from all interested parties regarding the work of the commission. Members of the public shall be afforded the opportunity to comment on any agenda item at the time it is addressed and may be asked to sign a form or card to address the particular item.

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If it has been decided before the meeting how much time will be allowed for public comment (for example, 3 minutes per person) and how the order of speakers will be determined, that information should be placed on the agenda. The procedures for public comment should be announced by the chair.

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Records and Information

1. Meeting Materials

Materials that are provided to commission members for any meeting will also be made available to the public on request, unless the material relates to a closed meeting topic under the Sunshine Law. Materials can be made available either as hard copies or by electronic means.

As with requests for agenda items, effort should be made to make all meeting materials available to the commission secretary at least fourteen days prior to the date of the meeting, especially those that will be relied upon for the meeting. This ensures that the commission secretary and department staff have sufficient time to compile and distribute meeting materials to commissioners and other interested parties and to make this information available on the commission's web page within a reasonable timeframe prior to the meeting. The commission, in its sole discretion, may determine whether or not to consider any materials provided to the commission less than fourteen days prior to the date of the meeting.

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2. Minutes

The commission secretary will maintain minutes of commission meetings and draft minutes shall become final upon approval at a subsequent commission meeting.

3. Records

The commission shall maintain the types of records listed below. Except for records closed in accordance with the Sunshine Law, the records shall be made available to the general public, by the commission webpage if possible. In addition, citizens can obtain copies of records upon request to the commission's custodian of records and payment of appropriate fees.

- Policies
- Meeting dates, times, places and agendas
- Minutes
- Meetings packet materials and handouts
- Rulemaking reports
- Regulatory Impact Reports
- Instruction on participation and submission of information
- Commission member contact information
- Other materials utilized by the commission

Most commission meetings are streamed live on the Department of Natural Resources' live meeting page at www.dnr.mo.gov/videos/live.htm. In addition,

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meetings are recorded and the livestream recordings of past meetings are available at the Hazardous Waste Management Commission's website at:

<http://www.dnr.mo.gov/env/hwp/commission/commis.htm>

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Roles and Responsibilities

1. Commission Members

Each commission member represents the interest of the general public and the concerns for which he/she was appointed. Members also provide representation to facilitate open communication between the regulated community, interested groups, the general public and the department.

The authority of the commission rests in the commission as a whole, not in individual members. Members shall faithfully carry out the powers and duties placed upon them by law, which may include:

- Establishing policy and direction for the program.
- Rule-making in accordance with the laws and policies governing rule-making.
- Performing a quasi-judicial function with respect to decisions on appeals.

Each commissioner is expected to attend training events in accordance with the Training Policy contained in Appendix 2.

Each commissioner is expected to fully review the materials provided prior to each meeting.

2. Director of the Department of Natural Resources

- By statute, the director of the Department of Natural Resources is directed to execute policies established by the commission and is subject to commission decisions as to all substantive and procedural rules. Department decisions are subject to appeal to the commission. The director is also responsible for recommending policies to the commission to achieve effective and coordinated environmental control.

3. Hazardous Waste Program Director

- The Hazardous Waste Program Director is directly responsible to the commission and has primary responsibility for commission support and for implementation of commission decisions. The program director's responsibilities include preparing and disseminating meeting agendas and supporting materials, issuing notices, arranging logistics for commission meetings, and coordinating staff presentations, analyses and rule development.
- According to Chapter 640, the program director is approved and may be removed or reassigned by the commission through a written request to the department director.

4. Commission Secretary and Program Staff

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- The commission secretary and program staff assist the program director. Program staff are appointed by the department director and are required to provide optimum service, efficiency and economy. Commissions should discuss any staff issues first with the program director.

5. Department of Natural Resources Legal Counsel

- The department's or division's legal counsel provides advice and assistance to the director, divisions and programs, and commissions as necessary

6. Attorney General's Office

- An assistant attorney general is assigned to provide legal counsel to the commission. The Office of the Attorney General represents the department in appeals. The Office of the Attorney General represents the State at the relation of the commission in matters referred by the commission or in suits brought against the commission. An assistant attorney general addressing the commission should state who he or she is representing (the department, the commission or the State).

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Appeal Hearings and Decisions

1. Appeal Hearings

Appeals of agency decisions shall be initiated in accordance with the procedure established in section 621.250 RSMo and 10 CSR 25-2.020, Hazardous Waste management Commission Appeals and Requests for Hearings.

Deleted: For any agency decision that has been appealed to the commission, the commission may request the Administrative Hearing Commission to provide a hearing officer to conduct the hearing and handle all preliminary and discovery matters in accordance with applicable statutes, rules and procedures.¶

2. Decision after Hearing

As specified in 10 CSR 25-2.020, upon receipt of the Administrative Hearing Commission's recommendation and the record in the case, the commission shall:

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- Distribute the recommendation to the parties or their counsel.
- Allow the parties or their counsel an opportunity to submit written arguments regarding the recommendation
- Provide a reasonable time for oral argument upon the request of any party before the commission makes the final determination.

Deleted: Following a hearing on an appeal, the hearing officer will provide the appeal record, findings of fact and conclusions of law, and recommendations to the commission. The commission shall hold a meeting as expeditiously as possible to decide the appeal.

- Base its decision on the appeal only on the facts and evidence in the hearing record.
- Issue a written decision including findings of facts and conclusions of law.

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The commission shall p

- Change a finding of fact or conclusion of law made by the Administrative Hearing Commission, or vacate or modify the recommended decision, only if the commission states in writing the specific reason for the change.

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- Appeal from a final decision of the commission may be filed in the manner provided by law.

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- A record of the decision in the appeal shall be preserved as provided by law and shall be available to the public.

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Communications

1. Open Communication

Commission members will strive to solicit balanced viewpoints on significant issues. Members will be aware that hearing views from just one source (such as department staff, industry or environmental groups) may not adequately present the whole issue.

On rule-makings that are expected to be significant or controversial, the commissioners will encourage early input and involvement from all interested stakeholders, since waiting for the public hearing may be too late in the process to fully consider competing viewpoints.

Commissions serve both a quasi-legislative and quasi-judicial role. Commission members will be open to all comments in the quasi-legislative role, such as comments related to rulemaking.

In their quasi-judicial role, commissioners will avoid any ex parte communications on pending appeals with litigants to the dispute, including department staff, as well as any other persons who may have an interest in the pending appeal.

Commission members may receive comments and information from interested persons in compliance with Sunshine Law requirements when such information concerns the active and ongoing business of the Commission, or when such contact seeks to propose new action by the Commission. The Commission member should notify the Chair; or in the case of it being the Chair, they should notify the Vice-Chair, of the contact and communication, and should strongly encourage the interested person to participate in a public meeting or request an agenda item for a future meeting to more fully discuss the matter.

2. Commission Contact

Each commission shall provide a means for public contact, generally including a phone number, address and email address.

3. Commission Webpage

The department will maintain a board and commission webpage that provides information on each commission and its members, contact information regarding the commission and its members and meeting agendas. Commissions are strongly encouraged to also post meeting minutes, public notices or other materials to provide for public access.

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Compliance with other Laws

1. Missouri's Sunshine Law

- All activities of the commission shall be carried out in strict accordance with the Missouri Sunshine Law, RSMo Chapter 610. The commission honors the letter and the spirit of the Sunshine Law.

2. Personal Finance Disclosure

- Each commissioner shall annually file a Personal Finance Disclosure Statement in accordance with RSMo Chapter 105.

3. Conflict of Interest

Commissioners shall comply with all applicable statutory requirements regarding conflict of interest, including RSMo Chapter 105

- In the quasi-judicial role, commissioners recognize that they are acting as judges in appeals to the commission. In this capacity, members will strive to remain fair, independent, and open-minded. Commissioners will avoid both actual and perceived conflicts of interest in their quasi-judicial role.
- If a commissioner publicly takes or expresses a position on an issue that later comes before the commission on an appeal, the commissioner will recuse himself on the record from any discussion, deliberation, or decision making on the issue.

4. Administrative Procedures

- The commission shall comply with the rule-making and other applicable requirements of the Missouri Administrative Procedures Law, RSMo Chapter 536.

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Boards and Commission's Operating Policies
Appendix 1
Regulatory Impact Report
Requirements and Content



Missouri Department of Natural Resources

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**Missouri Department of Natural Resources
Directions for the Regulatory Impact Report
September 2004**

Endorsed by the Commission Core Workgroup January 9, 2004 and September 24, 2004 as revised

The Regulatory Impact Report (RIR) is a means to provide to the public and interested parties information on some rule development within the Department of Natural Resources. It is a summary of the information, discussion, input and rationale used by the department in rulemaking that prescribes environmental standards or conditions.

The goal of this RIR is to ensure accountability, consistency and transparency in the process for those specific rulemakings. Distribution of the RIR will make this information readily available to a wide audience in a timely manner.

Rulemaking that meets the criteria in 536.025.1 RSMo as emergency rules may be promulgated without following the standard rulemaking process if approved by the department director. In this situation, the questions pertinent to 640.015 RSMo must be completed within 180 days of adoption of the rule.

References

640.015, RSMo Department of Natural Resources

An excerpt:

640.015. 1. All provisions of the law to the contrary notwithstanding, all rules that prescribe environmental conditions or standards promulgated by the department of natural resources, a board or a commission, pursuant to authorities granted in this chapter and chapters 260, 278, 319, 444, 643, and 644, RSMo, the hazardous waste management commission in chapter 260, RSMo, the state soil and water districts commission in chapter 278, RSMo, the land reclamation commission in chapter 444, RSMo, the safe drinking water commission in this chapter, the air conservation commission in chapter 643, RSMo, and the clean water commission in chapter 644, RSMo, shall cite the specific section of law or legal authority. The rule shall also be based on the regulatory impact report provided in this section.

Definitions

Rulemaking: Any action by the department to add, amend or rescind a rule in the Code of State Regulations.

Promulgate: For the purposes of the department's rulemaking, the filing of a proposed rulemaking with the Secretary of State for publication in the Missouri Register.

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Complete or Completed Regulatory Impact Report: The finished Regulatory Impact Report signed by the division director. The RIR is completed before it is submitted to the Secretary of State with the proposed rule.

Draft rule or rulemaking: A rule that is in the development stage within the department.

Proposed rule or rulemaking: A rulemaking that has been filed with the Secretary of State.

Applicability

The Regulatory Impact Report is required for any rulemaking that meets the requirements of 640.015 RSMo; that is, one that prescribes environmental standards or conditions.

The following guidance describes what divisions or programs will typically have to complete a Regulatory Impact Report and which may not. *If you have any questions – please talk with your legal counsel.*

Regulatory Impact Report	No Regulatory Impact Report
Rulemakings impacted by the requirements for Regulatory Impact Report (640.015 RSMo)	Rulemakings that do not meet requirements for Regulatory Impact Report
Summary of who must complete a Regulatory Impact Report based on 640.015 RSMo	Summary of who may not need to complete the Regulatory Impact Report based on 640.015 RSMo
<ul style="list-style-type: none"> ▪ Any rulemaking prescribing environmental conditions or standards ▪ Hazardous Waste Commission ▪ Soil and Water Districts Commission ▪ Safe Drinking Water Commission ▪ Land Reclamation Commission ▪ Air Conservation Commission ▪ Clean Water Commission ▪ Geologic Survey Program ▪ Water Resources Program ▪ Solid Waste Management Program ▪ Environmental Services Program ▪ Energy Center ▪ EIERA ▪ PSTIF 	<ul style="list-style-type: none"> ▪ Division of State Parks ▪ State Historic Preservation Office ▪ Division of Administrative Support ▪ Communication and Education Office ▪ Any divisional administrative programs ▪ Land Survey Program ▪ Environmental Assistance Office
References: Chapter 260 – EIERA, SWMP, HWP, EC Chapter 278 – SWCP Chapter 319 – PSTIF Chapter 444 – LRP Chapter 643 – APCP Chapter 644 – WPP Chapter 640 – DNR	

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Drafting the Regulatory Impact Report

The length of the RIR will vary widely, depending on the complexity and scope for the rulemaking. For some rulemaking proposals, a detailed RIR with numerous technical and scientific references, explanations, stakeholder meeting notes or recommendations will be warranted. Other rulemakings may require a simple RIR of two to three pages. Supporting documents should be made available via references, hypertext links, embedded PDF files or paper copies on file as appropriate for the rulemaking.

Peer reviewed and published data or scientific information and references

640.015 RSMo requires the use of available peer-reviewed science and an explanation of that scientific information used that has not undergone peer review. In order to meet the requirements of 640.015 RSMo the following process is to be used to delineate the scientific support of any new rulemaking or amended rule/regulation. The purpose of these guidelines is to address any questions that arise about the scientific support for any proposed rulemaking.

All scientific information used in the creation of the rulemaking is to be documented. This includes any information introduced into the process by department staff or brought to our attention by stakeholders during the rulemaking process. The information listed below shall be compiled and provided to the public upon request. This documentation shall be submitted following the standardized format presented below in order to allow a careful examination of the record.

1. Peer-reviewed publications – journal articles (whether paper or electronic), proceedings, books, and government reports that have undergone scientific peer-review. This would include internally produced reports that have undergone peer review under the process formally approved by the department director
2. Non peer-reviewed publications – This would include reports from university, government, consulting firms or other researchers, manuscripts submitted, but not yet reviewed, and internally generated reports, memos and letters. It includes all documents that do not meet the criteria for peer-reviewed publications established above.
3. Raw data – This would include data collected by the department staff or external groups that has not been published in a report, but is still useful in explaining the reason for a particular regulation or section thereof. For all raw data, the Quality Assurance Performance Plan should be available.

At the beginning of the peer-review section, list all the documents included in that section. If peer reviewed data is not reasonably available, provide an explanation of why it is not available.

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For the other two sections, list all the documents and then a short explanation of how and why that information was used in creating the proposed rulemaking. For those documents that exist on-line, the complete URL for the document can be supplied.

This documentation of the record, as noted in the paragraph directly above shall be included in the submission of the rulemaking to the Secretary of State's Office and the Joint Committee on Administrative Rules. If it were not included the proposed rulemaking as filed would be subject to challenge and voiding.

Providing the draft rulemaking to the Departments of Health and Senior Services, Economic Development, Conservation and Agriculture and Governor's Office

According to Executive Order 02-05 any rulemaking by the department regarding environmental quality, human health, or economic and rural development must be provided to the Departments of Health and Senior Services, Economic Development, Conservation and Agriculture and the Governor's Office for a 30 day review time before the proposed rule is filed with the Secretary of State. The Regulatory Impact Report may be provided with the draft rule, at the decision of the division. This interagency review time may coincide with the required 60-day public comment period for the Regulatory Impact Report (see next section).

Distribution of the Complete Regulatory Impact Report

The complete Regulatory Impact Report is signed by the program director and is provided with the other rulemaking information to the department director for approval to proceed. The Orange Folder process is used.

The complete RIR is then placed on the department's or program's web site, and conspicuously labeled as a new addition on the Regulatory Agenda page. Paper copies will be sent to those requesting copies at the same time.

The department, board or commission also publishes in at least one newspaper of general circulation with an average circulation of 20,000 or more, a notice of availability of the Regulatory Impact Report. The public shall have at least 60 days to comment. All comments and responses to significant comments shall be posted before the proposed rule is filed with the Secretary of State.

Filing of the Regulatory Impact Report and Proposed Rule

A program may change wording in the draft rulemaking based on comments received on the Regulatory Impact Report and input from boards, commissions or others.

The complete Regulatory Impact Report shall be filed with the Joint Committee on Administrative Rules concurrently with the filing of the proposed rule with the Secretary of State.

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Missouri Department of Natural Resources
Regulatory Impact Report
In Preparation For Proposing
[A New Rule **OR** An Amendment to **OR** A Rescission of] [rule number]

Division/Program: _____

Rule number: 10 CSR [XX-YYY.ZZZ] **Rule title:** _____

Type of rule action: [*Select one: New Rule, Amendment to Existing Rule, Rescission of Existing Rule*]

Nature of the rulemaking: [*Select as many as apply: Affects environmental conditions, Prescribes environmental standards, Administrative, Other conditions*]

Approval of the Completed Regulatory Impact Report

Program Director

Date

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Missouri Department of Natural Resources

Regulatory Impact Report

In Preparation For Proposing

[A New Rule **OR** An Amendment to **OR** A Rescission of] [rule number]

Applicability: Pursuant to Section 640.015 RSMo, “all rulemakings that prescribe environmental conditions or standards promulgated by the Department of Natural Resources...shall... be based on the regulatory impact report...” This requirement shall not apply to emergency rulemakings pursuant to section 536.025 or to rules of other applicable federal agencies adopted by the Department “without variance.”

Determination: The Missouri Department of Natural Resources has determined this rulemaking prescribes environmental conditions or standards and verifies that this rulemaking is not a simple unvarying adoption of rules from other federal agencies. Accordingly, the Department has produced this regulatory impact report which will be made publicly available for comment for a period of at least 60 days. Upon completion of the comment period, official responses will be developed and made available on the agency web page prior to filing the proposed rulemaking with the Secretary of State. Contact information is at the end of this regulatory impact report.

1. Describe the environmental conditions or standards being prescribed.
2. A report on the peer-reviewed scientific data used to commence the rulemaking process.
3. A description of the persons who will most likely be affected by the proposed rule, including persons that will bear the costs of the proposed rule and persons that will benefit from the proposed rule.
4. A description of the environmental and economic costs and benefits of the proposed rule.
5. The probable costs to the agency and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenue.
6. A comparison of the probable costs and benefits of the proposed rule to the probable costs and benefits of inaction, which includes both economic and environmental costs and benefits.
7. A determination of whether there are less costly or less intrusive methods for achieving the proposed rule.
8. A description of any alternative method for achieving the purpose of the proposed rule that were seriously considered by the department and the reasons why they were rejected in favor of the proposed rule.
9. An analysis of both short-term and long-term consequences of the proposed rule.

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- 10. An explanation of the risks to human health, public welfare or the environment addressed by the proposed rule.
- 11. The identification of the sources of scientific information used in evaluating the risk and a summary of such information
- 12. A description and impact statement of any uncertainties and assumptions made in conducting the analysis on the resulting risk estimate.
- 13. A description of any significant countervailing risks that may be caused by the proposed rule
- 14. The identification of at least one, if any, alternative regulatory approaches that will produce comparable human health, public welfare or environmental outcomes.
- 15. Provide information on how to provide comments on the Regulatory Impact Report during the 60-day period before the proposed rule is filed with the Secretary of State
- 16. Provide information on how to request a copy of comments or the web information where the comments will be located.

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 Regulatory Impact Report
 For
Proposed (new rule, amendment, rescission of rule number)

Information in italics is there to help you answer the question. The information in italics is deleted when the Report is prepared.

Division/Program _____

Rule number (if known) _____ Rule title _____

Type of rule (Select one: New, Amendment, Rescission)

Nature of the rule (Select as many as apply: Affects environmental conditions, Prescribes environmental standards, Administrative, Other conditions)

Submitted by _____

Program Director _____ Date _____

Approval of the Completed Regulatory Impact Report

Legal Counsel _____ Date _____

Division Director _____ Date _____

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Missouri Department of Natural Resource
 Regulatory Impact Report
 For
Proposed (new rule, amendment, rescission of rule number)

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Boards and Commission's Operating Policies

Appendix 2

Training for Commissioners

Adopted by the Commissioners' Core Workgroup
February 27, 2004

Premise: Comprehensive knowledge and understanding of the commissioner's responsibilities and roles, as well as of the substantive laws and regulations governing each commissioner's respective program, is key to competent and consistent performance of commissioners.

1. New Commissioner Information

Upon appointment, each new commission/board member shall receive orientation from their respective commission/board and, at a minimum, a notebook containing copies of the following:

- a. The commission's/board's operating policies.
- b. The statutes and regulations governing the respective program and its authority, summarized as appropriate because of volume, including roles and responsibilities of the Staff Director and the Commission/Board.
- c. The Sunshine Law.
- d. The financial disclosure and conflict of interest statutes (Ethics Commission).
- e. Department of Natural Resources general information, including mission, list of commissions/boards, Department budget and organizational chart.
- f. Description of commissioner's quasi-judicial role (where appropriate).
- g. General overview of the rule-making process (where appropriate).
- h. A summary of the state revolving fund and the bond process (where appropriate).

2. Training (offered once a year)

Within 12 months following appointment, all new commission/board members shall attend a standardized training module. Other commission/board members are encouraged to attend one of the standardized training opportunities. Training modules may provide in-depth presentations on the subjects listed below:

- a. Rulemaking process, including Regulatory Impact Report (RIR).
- b. MoDNR Budget.
- c. Quasi-judicial role.
- d. Policies.

Deleted: Final – September 30, 2004

Draft – August 2012

- e. Services of the Attorney General's Office.
- f. Sunshine Law.
- g. Financial disclosure laws and conflicts of interest.
- h. Authority of commissions/boards.
- i. Organizational structure.
- j. Permits process.

Alternate means (electronic, etc.) of training will be provided for new members unable to physically attend a comprehensive training session.

3. Commissioners Conference (to be held every two years)

All commission/board members will be expected to attend a biennial one-day conference that will provide:

- a. Updated training refresher sessions (one-half day).
- b. Issues seminar in break-out sessions (one-half day). The Department, environmental groups, business/industry groups, legislators and other interested parties will be invited to give presentations on relevant issues pertinent to the commissions/boards.

4. Training Providers

Planning for the training events will be managed by the Outreach and Assistance Center in consultation with commission/board chairs, representative Division and Program Directors, and external constituencies. Presentations of the various topics at the training sessions will be provided, as appropriate, by:

- a. The Director's Office and Outreach and Assistance Center.
- b. Program staff.
- c. The Attorney General's Office.
- d. The Ethics Commission.
- e. Environmental groups.
- f. Business/industry groups.
- g. Agencies or groups representing the general public.
- h. The Environmental Protection Agency (EPA).
- i. Other federal or state agencies.
- j. Environmental Improvement and Energy Resources Authority (EIERA).

5. Training Costs

- a. Training and incidental tasks by MoDNR and other state personnel will be provided by existing personnel as part of their work assignments.

Draft – August 2012

- b. Costs of information notebooks, incidentals, travel, meals and lodging will be borne by each respective program for its commission/board member.
- c. Logistic costs of meeting place and incidentals will be borne by the Department.
- d. Members of the public attending the training shall

Draft – August 2012

Missouri Department of Natural Resource
Regulatory Impact Report
For
Proposed (*new rule, amendment, rescission of rule number*)

Information in italics is there to help you answer the question. The information in italics is deleted when the Report is prepared.

Division/Program _____

Rule number (*if known*) _____ Rule title _____

Type of rule (*Select one: New, Amendment, Rescission*)

Nature of the rule (*Select as many as apply: Affects environmental conditions, Prescribes environmental standards, Administrative, Other conditions*)

Submitted by

Program Director Date

Approval of the Completed Regulatory Impact Report

Legal Counsel Date

Division Director Date

For
Proposed (*new rule, amendment, rescission of rule number*)

Does the rulemaking adopt rules from the US Environmental Protection Agency or rules from other applicable federal agencies without variance?

If Yes, a RIR is not needed.

If No, the remaining questions must be answered.

Please provide the following requested information. Each item must be addressed.

A report on the peer-reviewed scientific data used to commence the rulemaking process.

A description of the persons who will most likely be affected by the proposed rule, including persons that will bear the costs of the proposed rule and persons that will benefit from the proposed rule.

A description of the environmental and economic costs and benefits of the proposed rule.

The probable costs to the agency and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenue.

A comparison of the probable costs and benefits of the proposed rule to the probable costs and benefits of inaction, which includes both economic and environmental costs and benefits.

A determination of whether there are less costly or less intrusive methods for achieving the proposed rule.

A description of any alternative method for achieving the purpose of the proposed rule that were seriously considered by the department and the reasons why they were rejected in favor of the proposed rule.

An analysis of both short-term and long-term consequences of the proposed rule.

An explanation of the risks to human health, public welfare or the environment addressed by the proposed rule.

The identification of the sources of scientific information used in evaluating the risk and a summary of such information

A description and impact statement of any uncertainties and assumptions made in conducting the analysis on the resulting risk estimate.

A description of any significant countervailing risks that may be caused by the proposed rule

The identification of at least one, if any, alternative regulatory approaches that will produce comparable human health, public welfare or environmental outcomes.

Provide information on how to provide comments on the Regulatory Impact Report during the 60-day period before the proposed rule is filed with the Secretary of State

Provide information on how to request a copy of comments or the web information where the comments will be located.



JEREMIAH W. (JAY) NIXON
GOVERNOR

CAROL R. EIGHMEY
EXECUTIVE DIRECTOR

July 20, 2012

Michael Foresman, Chairman
Hazardous Waste Management Commission
901 Stonebrook Manors Court
St. Louis, MO 63122-4966



Dear Chairman Foresman and Members of the Hazardous Waste
Management Commission:

At the June 21, 2012 meeting of the Hazardous Waste Management Commission, Tim Eiken led a discussion on the "Hazardous Waste Management Commission Operating Policies." During the discussion, the Commission invited ideas from staff and others on how the procedures might be revised and improved. It was suggested that ideas be submitted in writing prior to your next meeting.

We appreciate the opportunity to offer the following suggestions:

- We salute the Department's commitment to improving citizens' access by "live streaming" your meetings. We suggest the meeting agenda state whether the meeting will be "live streamed," so interested persons can decide whether to travel to Jefferson City or not.
- We suggest your meeting agendas notify the public where/how/when materials for the meeting can be obtained.
- We suggest the Commission's Policies specify your staff is required to maintain a list of persons who want to receive agendas for the meetings, and to distribute agendas to those persons or notify them of the availability of the agenda by a certain deadline.
- We suggest specifying that any materials provided to Commissioners in advance of meetings also be made available to interested citizens at least two days in advance, or – if that is not possible in some circumstances -- that copies be made available at the beginning of the meeting and on the web the day of the meeting.
- We realize it is impossible to anticipate how discussions at meetings will develop. However, at several meetings over the last year or so, Commissioners have made and passed motions on agenda items that were indicated as "information only." This makes it difficult for interested persons to provide pertinent input to Commissioners in advance of those decisions. Therefore, we suggest that, to the



Petroleum Storage Tank Insurance Fund

P.O. Box 836 • JEFFERSON CITY, MO 65102 • PHONE (573) 522-2352 • FAX (573) 522-2354

extent possible, the agenda clearly identify which agenda items will involve a decision by the Commission.

- As mentioned at the June meeting, all persons with information pertinent to a decision, including staff, should be given equal opportunity to provide input to Commissioners in advance of your decisions.
- We concur with comments made by Kevin Perry at the June meeting that – depending on how the discussion evolves at a meeting – it is not always possible for an interested citizen to know in advance that they wish to speak or that they have relevant information to offer. We encourage the Commission not to implement “Policies and Procedures” so rigidly as to stifle useful discussion or restrict citizens’ access.
- We note some Commissioners’ reticence to engage in dialogue with citizens outside of Commission meetings, and appreciate Vice Chairman Bracker’s wisdom in requesting advice from the AGO on this matter.
- We suggest “Regulating USTs” be added to Section 1 of the Procedures.
- We encourage retention of language in Section 5 that acknowledges joint meetings and/or working meetings may sometimes be appropriate.
- We support retention of language in Sections 6 and 7 explicitly acknowledging that members of the public be afforded opportunity to comment on any agenda item at the time it is addressed.
- We suggest you consider including the following language, enacted in HB1251 by the 2012 Missouri General Assembly and applicable to the Clean Water Commission, in your Policies:

“In addition to opportunities to submit written statements or provide testimony at public hearings in support of or in opposition to proposed rulemakings..., any person who submits written comments or oral testimony on a proposed rule shall, at any public meeting to vote on an order of rulemaking or other commission policy, have the opportunity to respond to the proposed order of rulemaking or department of natural resources' response to comments to the extent that such response is limited to issues raised in oral or written comments made during the public notice comment period or public hearing on the proposed rule.”

Please know we recognize how challenging and time consuming it is to serve on a Commission and how much information you are asked to read and understand.

Letter to Chairman Foresman and Members of the Hazardous Waste
Management Commission

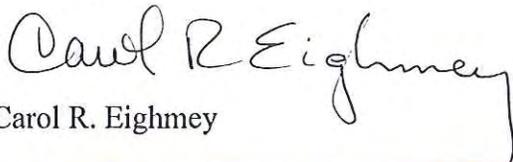
July 20, 2012

Page 3

Additionally, we recognize it is impossible to write "Policies" that effectively anticipate every situation or circumstance. So while we appreciate the opportunity to offer these ideas, we support your need to exercise flexibility and discretion as you carry out your responsibilities.

Thank you for the service you render to the citizens of Missouri.

Sincerely,



Carol R. Eighmey

cc: David Lamb, Staff Director, HWMC
Kara Valentine, Attorney General's Office

CRE/drj



August 10, 2012

Mr. Michael Foresman
Chairman
Hazardous Waste Management Commission
901 Stonebrook Manors Court
St. Louis, MO 63122-4966

Subject: Comments on “Hazardous Waste Management Commission Operating Policies”

Dear Chairman Foresman and Members of the Hazardous Waste Management Commission:

At the June 21, 2012 Hazardous Waste Management Commission Meeting, the Commission invited comments on how the “Hazardous Waste Management Commission Operating Policies” (“Policies”) might be revised. The Commission also invited public input on Commissioner Bracker’s proposal to discourage communications between interested persons and individual commissioners.

This letter is our response to that request.

Thank you for the opportunity to comment.

1. **Operating Policies.** We acknowledge that some other Commissions and Boards associated with MDNR did not adopt operating policies back in 2004 when the Commissioners Core Workgroup was recommending these policies. We acknowledge the Hazardous Waste Management Commission (HWMC) for adopting operating policies and encourage you to maintain these policies and follow them.

We also support the HWMC’s commitment to review the policies on a regular schedule. This commitment to a regular review cycle was adopted at the HWMC at the June 21, 2012 meeting.

2. **Discouraging Communications Outside of Public Meetings.** The very specific instance regarding the quasi-judicial role of the HWMC was cited in discussion at the June 21, 2012 HWMC meeting. We support strict adherence to provisions and practices that would prohibit *ex parte*

communications, including those with MDNR staff/employees, while Commissioners are acting in a quasi-judicial role.

We suggest that the existing language on p. 14 of the Policies regarding *ex parte* communication be retained with no changes.

However, the HWMC, in our view, acts in this quasi-judicial role only a small portion of the time. The Commission's dominant role is a quasi-legislative one, setting policies and promulgating regulations.

A change in the Policies regarding the quasi-legislative role has been offered for consideration that would discourage communications between interested persons and individual members of the HWMC. We do not support this proposed change. Rather, we request that the language in the **Open Communication** section of the Policies on p. 14 remain unchanged.

We offer the following in support of our suggestion to retain the existing Policies language:

- We are not aware of a problem or issue that would be mitigated by this proposal. If there is a problem, we would like to have that problem identified publicly and discussed before the HWMC takes action on this proposal. For example, we are not aware that interested persons are harassing Commissioners with calls or meeting requests. If that is the case, we'd like to offer input on solving that problem before an action is taken to discourage individual communications.
- If HWMC is acting in a quasi-legislative role, it may consider taking a cue from the Missouri legislature which does not discourage private meetings with constituents or interested parties. Rather, individual communications are encouraged, welcomed and relied on.
- There may be confusion about the Sunshine Law. We believe it is absolutely clear that nothing about the Sunshine Law implies or states directly that private communications between members of public governmental bodies and interested persons are prohibited or even improper. Before any action is taken to limit communications based on Sunshine Law concerns, we suggest that a formal opinion from the AGO be sought.
- Limiting communication between interested parties and Commissioners to public meetings ensures that in some instances Commissioners will make decisions about important policies and rulemakings without information that individuals are uncomfortable presenting in a formal or public setting. Not all information or perspective is readily delivered, understood or welcomed in a formal public setting. We hope that the Commission would want to make its decisions after being fully informed, even about matters that difficult to speak about publicly.
- The current Policies clearly encourage and promote open communication. The changes proposed would be a significant and negative departure from the existing policy, which we assume was intended to elicit the best information for decision-making.
- MDNR employees acting as private individuals or as functionaries of the executive branch are not disinterested or impartial parties to the issues that are before the Commission for consideration. The existing Policies identify MDNR staff as one of many views that should be heard and considered. This view should not be diminished by discouraging communications with persons who are not MDNR staff.

January 18, 2012

Page 3

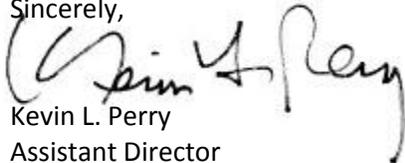
- Some issues are complex. These can be communicated and understood better in an informal, back-and-forth dialog. These are often not well communicated in formal hearing testimony. Private discussions and dialog can improve understanding of complex technical issues.
3. Applicability. We echo Mr. Ron Leone's verbal comments made at the June 21, 2012 HWMC meeting. If the HWMC adopts a policy to discourage private communication between Commissioners and interested parties, we request that such policy apply equally to MDNR employees.
 4. Hearing Before Acting. We support retention of language in Sections 6 and 7 of the Policies explicitly acknowledging that members of the public be afforded opportunity to comment on any agenda item at that time it is being considered. Putting off comments from the public until the Public Comment item later on the meeting agenda, after a decision has been made, diminishes the utility of the information offered.

We know that Commissioners serve on a voluntary basis, without compensation, and invest significant time and effort in setting policy for the State of Missouri. We appreciate this enormous effort. Thank you for the important work you do.

And thank you for considering our comments.

I would be happy to discuss these comments and the other Policies changes that are in consideration with any of you at any time. You can reach me at 573 680-5069.

Sincerely,

A handwritten signature in black ink, appearing to read "Kevin L. Perry". The signature is written in a cursive, flowing style.

Kevin L. Perry
Assistant Director

Missouri Hazardous Waste Management Commission Meeting

August 16, 2012

Agenda Item # 4

Battery Storage Trailer Parking Issue – Commission Inquiry Response

Issue:

This is an update requested by the Missouri Hazardous Waste Management Commission (MHWMC) regarding requirements for battery storage.

Information:

- During the June 21, 2012, HWMC meeting, Exide's representative presented information regarding regulatory changes at the Indiana Department of Environmental Management (IDEM) that will allow for the staging of "non-conforming" lead acid batteries for up to 14 days without a permit (attachment 1). They also presented a letter from U.S. EPA Region 5 indicating that this 14 day staging period is up to each authorized state to determine (attachment 2).
- The HWP has contacted Ms. Ruth Jean, IDEM, which Exide's representative had mentioned at the June 21, 2012, HWMC meeting, whom they had contacted for the information. At the HWP's request, Ms. Jean sent written clarifications (attachment 3) regarding the condition of these batteries during this 14 day staging period.
- IDEM discusses that during their rulemaking process they received a comment regarding the condition of batteries and types of containers for shipping. Their response was that transportation of batteries is under the jurisdiction of the DOT. The HWP has also made the determination that shipment of batteries is under the jurisdiction of DOT.
- IDEM also explains that they had initially proposed interior inspections of the trailers, but revised the rule based upon comments that these inspections would not be practical or safe.
- IDEM goes on to clarify that "It was certainly never IDEM's intent to allow batteries to be staged on trailers while broken and/or leaking. IN DOT shipping requirements must still be complied with (though, as pointed out above, IDEM does not have the authority to regulate shipping containers). Our proposed rule states that spent lead acid batteries must be in good condition prior to sending off-site for storage or reclamation by retailers or wholesalers. Obviously, this does not address batteries from out-of-state retailers/wholesalers though. But it does suggest our intent is that batteries be shipped in good condition. Furthermore, our requirements for intermediate storage facilities indicate that batteries must be stored in a container in good condition."
- IDEM also stated, "Based on my discussions with our inspectors, technical advisor, and attorney, we will be moving forward with our rule without making any further changes. Again, if we begin to see problems with batteries arriving in poor condition, we will likely address the concern via enforcement and during the permit renewal process."

- Exide's representatives have also suggested in past MHWMC meetings that other states allow the storage of "non-conforming" batteries for periods of time without permitting. For example, during the April 2012 meeting, the commission was given a copy of a February 21, 2012, U.S. EPA Region 2 memo and Consent Agreement and Final Order issued to Battery Recycling Company, Inc. Paragraph 17, pages 21-22, states "Batteries remaining within a transportation vehicle or trailer must remain labeled and within containers packed in accordance with applicable Department of Transportation regulations, provided, however, that such pre-receipt, temporary storage shall not exceed 10 days without Respondent meeting the applicable requirements of 40 C.F. R. Parts 264, 266, and 270;"

"...further, upon discovering any broken or damaged batteries, Respondent shall immediately move such batteries to be processed and Respondent shall immediately clean residue from such broken or damaged batteries;"

"Notwithstanding any provision in this paragraph, no such temporary storage as permitted in accordance with this paragraph shall occur unless the batteries are stored within containers that comply with the requirements of 40 C.F. R Part 264, Subpart I;"

- The HWP is working with DOT and has drafted an official request for Pipeline and Hazardous Materials Safety Administration (PHMSA) interpretations regarding battery shipments and are currently waiting for a response. The HWP plans to update the Commission when we receive that response.

Recommended Action:

Information only.

Presented by:

Darleen Groner, P.E., Chief, Operating Facilities Unit, Permits Section, Hazardous Waste Program

From: JEAN, RUTH [mailto:RJEAN@idem.IN.gov]
Sent: Wednesday, June 27, 2012 6:48 AM
To: Groner, Darleen
Subject: RE: proposed battery rule

I've spoken with inspectors of both of our spent lead acid battery smelters, and both confirmed that batteries arriving in trailers have generally been in good condition. As far as Exide is concerned, although their permit currently allows 14 days for staging, they have ample permitted storage space, and the inspector has not seen where they are using that 14 days. Exide is apparently moving the batteries from the trailers to permitted storage rather quickly.

Based on my discussions with our inspectors, technical advisor, and attorney, we will be moving forward with our rule making without any further changes. Again, if we begin to see problems with batteries arriving in poor condition, we will likely address the concern via enforcement and during the permit renewal process.

Thanks,

Ruth

From: JEAN, RUTH
Sent: Monday, June 25, 2012 2:33 PM
To: 'Groner, Darleen'
Subject: proposed battery rule

Hi Darleen,

I believe the attached is the latest and possibly final version of our proposed battery rule. Section 3 is where the requirements begin with retailers and wholesalers. Section 5(c) is the staging requirement.

We did respond to a comment back in early 2010 regarding the condition of batteries and types of containers for shipment. IDEM's response was that we do not have the authority to regulate shipping containers as this is under the jurisdiction of the IN DOT.

Regarding exterior vs interior inspection of the trailers, IDEM agreed that exterior inspection of the trailers for signs of leakage is adequate, when in conjunction with the surface management requirements of the proposed rule. IDEM had initially proposed interior inspections of the trailers, but agreed with comments that this would involve climbing over pallets of batteries to see if any batteries at the head end of the trailer were damaged or leaking, which is not practical or safe. IDEM had initially required inspection of trailers from the outside within 24 hours of arrival, but that was dropped since the tracking and enforcement of the 24 hours from arrival time adds complexity for facilities and inspectors.

It was certainly never IDEM's intent to allow batteries to be staged on trailers while broken and/or leaking. IN DOT shipping requirements must still be complied with (though, as pointed out above, IDEM does not have the authority to regulate shipping containers). Our proposed rule states that spent lead acid batteries must be in good condition prior to sending off-site for storage or reclamation by retailers or wholesalers. Obviously, this does not address batteries from out-of-state retailers/wholesalers

though. But it does suggest our intent is that batteries be shipped in good condition. Furthermore, our requirements for intermediate storage facilities indicate that batteries must be stored in a container in good condition.

Our inspectors would have the authority to request a trailer of staged batteries be opened for inspection. Leaking containers must be addressed per the facility's contingency plan or spill response plan. I haven't had a chance to speak with our two inspectors who handle Exide and Quemetco, but they have both had opportunities to review and comment on the proposed rule. I'm certain the condition of batteries on the trailers has not been a concern for them, or we would have addressed it in our rule. Certainly, if it does become a concern, we would address it in the facility's permit renewal.

I'll speak to our rules attorney, and others involved in this rule, to see if they believe it is appropriate to address interior inspections of the staged trailers in our rule; however, at this point, given that we already addressed a similar comment a couple of years ago, I doubt that any changes will be made at this late stage of the rule-making process.

I'll keep you posted.

Thanks,

Ruth A. Jean
IN Dept. of Environmental Management
Office of Land Quality
Hazardous Waste Permit Section
rjean@idem.in.gov
317.232.3398 direct
1.800.451.6027
www.IN.gov/IDEM



**NEW RULES AND AMENDMENTS TO 329 IAC 3.1 CONCERNING
TEMPORARY STORAGE AND MANAGEMENT OF SPENT LEAD ACID
BATTERIES**

LSA Document #09-365

Overview

Provides requirements for the management of temporarily stored spent lead acid batteries, including transportation and storage by retailers, wholesalers, manufacturers, storage facilities and reclamation facilities, to prevent releases of contaminants into the environment. Intermittent storage of partially reclaimed spent lead acid batteries is also proposed to be regulated.

Citations Affected

Amends 329 IAC 3.1-11-2
Adds 329 IAC 3.1-11.1

Affected Persons

This rulemaking affects retailers, wholesalers, manufacturers, storage facilities, reclamation facilities, and transporters who temporarily store spent lead acid batteries, or partially reclaimed spent lead acid batteries.

Reason(s) for the Rule

This rulemaking would make the existing requirements consistent with the actual practices at regulated entities, while addressing management of spent lead acid batteries, and clarifying the existing rules.

Economic Impact of the Rule

Implementation of this rule will generally result in minimal fiscal impact on affected parties. In fact, this rulemaking may result in reduced costs through the allowance for staging for spent lead acid batteries, which would reduce double handling of spent lead acid batteries. The 14 day staging period

would significantly reduce, or eliminate the need for entities to construct additional or larger storage areas for incoming spent lead acid batteries. IDEM will not have to hire additional staff for compliance and enforcement purposes and will be able to utilize existing resources to administer the rule.

Benefits of the Rule

This rulemaking provides management of temporarily stored spent lead acid batteries, so as to prevent releases of contaminants into the environment. This rulemaking may result in some savings for entities through allowance for staging of spent lead acid batteries. **It also makes the existing requirements consistent with the actual practices at regulated entities and clarifies the existing rules so as to make compliance easier for the regulated entities.**

Description of the Rulemaking Project

The proposed rule would provide requirements for the management of temporarily stored spent lead acid batteries, including transportation and storage by retailers, wholesalers, manufacturers, storage facilities, and reclamation facilities, to prevent releases of contaminants into the environment. Intermittent storage of partially reclaimed spent lead acid batteries is also proposed to be regulated.

IDEM has largely replaced the adopt by reference format for federal requirements in the existing rule with the full text rule language in this proposed rule. **IDEM is adding some basic, common sense management requirements to address issues IDEM inspectors have observed over the years. These issues involve interpretation of existing rules and**

actual management practices. References to Indiana statutory requirements applicable to spent lead acid battery handlers have also been added to the rule to ensure persons subject to those requirements are aware of them.

IDEM has added definitions and management standards to clarify regulatory requirements, and as necessary to address the new temporary staging requirements. Under the new temporary storage requirements reclaimers will be allowed to stage whole spent lead acid batteries on incoming trailers for up to 14 (fourteen) days on an asphalt or concrete surface maintained in good condition provided the reclaimers comply with basic inspection and maintenance requirements.

IDEM has added a notification requirement in this rule for intermediate storage facilities that accumulate more than 5,000 (five thousand) kilograms of spent lead acid batteries. This requirement is consistent with the notification requirements for large quantity handlers of Universal Waste 329 IAC 3.1-16 under current rules.

Language has been added to clarify closure and corrective action requirements for permitted and unpermitted storage areas.

Requirements for transporters of spent lead-acid batteries are also being clarified under this proposal.

Scheduled Hearings

First Public Hearing: March 15, 2011, at 1:30 p.m., at the Indiana Government Center-South, 402 West Washington Street, Conference Center Room A.

Second Public Hearing: To Be Determined.

Consideration of Factors Outlined in Indiana Code 13-14-8-4

Indiana Code 13-14-8-4 requires that in adopting rules and establishing standards, the board shall take into account the following:

1) All existing physical conditions and the character of the area affected.

2) Past, present, and probable future uses of the area, including the character of the uses of surrounding areas.

3) Zoning classifications.

4) The nature of the existing air quality or existing water quality, as appropriate.

5) Technical feasibility, including the quality conditions that could reasonably be achieved through coordinated control of all factors affecting the quality.

6) Economic reasonableness of measuring or reducing any particular type of pollution.

(7) The right of all persons to an environment sufficiently uncontaminated as not to be injurious to:

(A) human, plant animal, or aquatic life; or

(B) the reasonable enjoyment of life and property.

Consistency with Federal Requirements

The new/amended rules are consistent with federal laws.

Rulemaking Process

The first step in the rulemaking process is a first notice published in the *Indiana Register*. This includes a discussion of issues and opens a first comment period. The second notice is then published which contains the comments, the departments responses from the first comment period, and the draft rule. A notice of first meeting/hearing is printed in the *Indiana Register* at the same time, or at a later date, as the case may be. The Solid Waste Management Board holds the first meeting/hearing and public comments are heard. The proposed rule is published in the *Indiana Register* after preliminary adoption along with a notice of second meeting/ hearing. If the proposed rule is substantively different from the draft rule, a third comment period is required. The second public meeting/hearing is held and public comments are heard. Once final adoption occurs, the rule is reviewed for form and legality by the Attorney General, signed by the Governor, and becomes effective 30 days after filing with Legislative Services.

IDEM Contact

Additional information regarding this action may be obtained from Kiran Verma, Rules Development Branch, Office of Legal Counsel (317) 232-8899 or (800) 451-6027 (in Indiana). Technical information regarding this action may be obtained from David Berrey, Office of Land Quality, (317) 234-6949 or (800) 451-6027 (in Indiana).



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

FEB 14 2002

REPLY TO THE ATTENTION OF: D-8J

Bruce Palin
Deputy Assistant Commissioner
Office of Land Quality
Indiana Department of Environmental Management
100 North Senate Avenue
P.O. Box 6015
Indianapolis, Indiana 46206-6015

RECEIVED

FEB 22 2002

Asst. Commissioner's Office
Office of Land Quality

Dear Mr. Palin:

Thank you for your letter of January 16, 2002 in which you requested EPA's position statement for establishing boundaries for staging time frames and state rule language regarding the temporary staging of batteries at permitted treatment, storage and disposal facilities (TSDs) and at recycling facilities.

Under 40 CFR §266.80, facilities which store batteries on site before reclaiming them are subject to the RCRA storage regulations in 40 CFR Part 264. There are no provisions for temporary on site storage of batteries prior to reclamation at a permitted treatment, storage or disposal facility. However, some states have chosen to allow a limited time period for staging. U.S. EPA believes that an authorized state regulatory agency may specify a holding time on a site specific basis but has not provided any guidance on the length of time that might be appropriate for such storage.

Alternatively, batteries which are reclaimed may be regulated under the Universal Waste Rule, 40 CFR Part 273. The Universal Waste Rule provides for 10 days of temporary storage by a universal waste transporter at a universal waste transfer facility. Please refer to 40 CFR §273.53 for storage time limits for transporters of universal waste.

If you have any questions concerning this issue, please feel free to contact Ms. Judy Kleiman of my staff at (312) 886-1482.

Sincerely,

Robert Springer
Robert Springer, Director
Waste, Pesticides and Toxics Division

Don Barry
Tom L
Bruce Kize

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

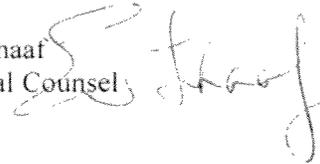
FEB 21 2012 REGION 2

DATE:

SUBJECT: *In re The Battery Recycling Company, Inc.*
Docket No. RCRA-02-2012-7101

FROM: Dore LaPosta, Director
Division of Enforcement and Compliance
Assistance

Eric Schaaf
Regional Counsel



TO: Judith A. Enck
Regional Administrator

Attached please find a Consent Agreement and Final Order ("CA/FO") intended to settle this RCRA Section 3008 enforcement action. We recommend that you accept the negotiated settlement as it includes important provisions to protect public health and the environment (many of which would be unavailable in litigation). If you accept this proposed settlement, please sign the Final Order and return it to the Office of Regional Counsel for further action.

BACKGROUND

As allowed under 40 C.F.R. § 22.13, Region 2 intends simultaneously to commence and conclude this administrative proceeding against The Battery Recycling Company (Respondent) by the issuance of a consent agreement and final order under the authority of 40 C.F.R. § 22.18(b). In accordance with the procedure for expedited Part 22 settlements, no formal complaint has been (or will be) issued.

Respondent is a Puerto Rico corporation that owns and operates a facility in Arecibo, Puerto Rico. The facility is primarily a secondary lead smelter. The facility's operations consist in large part of buying and collecting spent lead acid batteries (about 3,000 tons per month) to recover and resell the lead to battery manufacturers; Respondent reclaims the spent batteries. In reclaiming, the facility crushes the spent batteries to recover the lead and lead oxides for smelting. The spent batteries and the lead and lead oxides produced are mostly exempt from hazardous waste regulations. However, the processes at the Battery Recycling facility also generate hazardous waste, which consists in large part of dust generated through the capture of both emissions from the smelter's furnaces (furnace flue dust) and emissions generated from lead refining, and of wastewater treatment sludge generated from the treatment of, *inter alia*, spent battery acid, wastewater and stormwater collected at the facility, and laboratory wastes.

As reflected in the Consent Agreement that the parties have negotiated (and as would have been alleged had a complaint been issued), EPA has determined that each of Respondent's following failures has given rise to violations: 1) to make hazardous waste determinations; 2) to keep containers holding hazardous waste closed; 3) to minimize the risk of fire, explosion or release of hazardous waste/constituents in its handling and management of hazardous waste; 4) to obtain a permit for the storage of hazardous waste (or to satisfy the conditions required to store hazardous

waste without a permit); 5) to obtain a permit for the treatment of hazardous waste; 6) to meet the training requirements set forth in the regulations for facility personnel; 7) to have a complete contingency plan for the Battery Recycling facility; and 8) to comply with applicable Land Disposal Restriction requirements. EPA obtained this information in the course of three separate inspections conducted at the Battery Recycling facility — on February 23, 2010, on July 14, 2010, and on March 28, 2011. These inspections, conducted under authority given EPA by Section 3007 of RCRA, 42 U.S.C. § 6927, were carried out specifically to evaluate Respondent's compliance with applicable statutory and regulatory requirements for, *inter alia*, lead smelting operations. Had EPA issued a complaint, it would have sought a penalty in an amount slightly under \$600,000, with the bulk of that stemming from the failure to minimize risk and the failure to obtain a storage and treatment permit. This figure includes the likely economic benefit component, *i.e.* the amount Respondent would have spent had it been in RCRA compliance.

SETTLEMENT AGREEMENT

Commencing early summer 2011, the parties have met and been in regular communication working out the terms of the Consent Agreement. By late December 2011, the parties had tentatively reached agreement on the terms of the settlement, and had memorialized same in the consent agreement. This agreement was confirmed in communications in early January 2012.

Under the terms of the settlement agreement, Respondent is to pay a civil penalty of \$112,500. In addition, the agreement requires Respondent to undertake extensive injunctive relief measures intended to ensure it achieves and then remains in compliance with RCRA regulatory requirements for the operation of a secondary lead smelter. The following are included among the measures Respondent must institute and/or maintain:

Make hazardous waste determinations including whenever a material or process change at the Facility may affect a hazardous waste characterization;

Eliminate or otherwise minimize the release, to air, soil or surface water, of lead and/or dust containing other hazardous waste constituents resulting from a number of specified operations and activities involved in the generation, handling, storage and disposal of lead-containing wastes;

Eliminate or minimize the release of lead and/or dust containing other hazardous waste constituents resulting from evaporation that occurs during wastewater and stormwater runoff from the lead smelting operations discharged to the facility's wastewater treatment plant;

Eliminate or minimize off-site releases of lead-contaminated stormwater and wastewater;

Ensure batteries accepted for reclamation are regularly processed within 24 hours of receipt;

Ensure that all hazardous waste generated at the Facility is managed, treated and disposed in accordance with applicable hazardous waste regulations, including that all hazardous waste storage on-site shall not exceed ninety (90) days.

Eliminate or significantly reduce the off-site release of lead and/or other hazardous waste constituents resulting from the movement of vehicles to and from, and within, the facility, and from various employee practices;

Submit within ten (10) days of execution of the settlement a standard operating procedure manual, subject to EPA approval, to ensure compliance with the above-listed injunctive relief benchmarks;

Effect within fourteen (14) months the total enclosure of those portions of the facility in which lead-containing dust is generated, and, during the 14-month period, take interim measures to ensure that the release of such dust is minimized to the fullest extent possible;

Obtain a permit under either RCRA or the Clean Water Act in order that the operations of the facility's wastewater treatment plant attain regulatory compliance, with Respondent required to apply for such permit within thirty (30) days of the execution of the agreement;

Institute a training program for facility personnel that complies with applicable regulatory requirements; and

Prepare a contingency plan for the facility complying with applicable regulatory requirements.

Institute additional health and safety measures for both direct employee protection and to limit off-site, employee-transferred lead contamination.

It is estimated that Respondent will spend at least \$3 million to achieve the mandated injunctive relief provisions, and perhaps as much as \$6.7 million. The consent agreement also imposes other requirements. For example, Respondent is expressly obligated to comply with applicable 40 C.F.R. Part 268 Land Disposal Restriction provisions, and Respondent is barred from storing hazardous waste on-site for more than ninety (90) days; for storage under ninety (90) days, it must meet the regulatory exemption provisions set forth in 40 C.F.R. § 262.34(a).

In addition to requiring that Respondent perform the above-listed panoply of injunctive relief provisions, Respondent has further agreed to undertake and successfully implement three separate Supplemental Environmental Projects (SEPs), for which Respondent will expend at least an additional \$480,000. These SEPs are as follows:

Purchase and operate for at least three years a Vacuum Sweeper Vehicle to clean the facility's roadways of lead and/or other hazardous waste constituents, a SEP for which Respondent is to spend at least \$180,000 (actual expenses will likely be far greater):

Purchase and operate for the life of the facility's baghouse operations Pelletizer Units at each of the dust collector storage bins for the purpose of further minimizing dust generation and potential releases during fine baghouse dust handling and reclamation

procedures; this SEP will result in the recycling of almost all of this wastestream, and for this SEP, Respondent is to spend at least \$150,000; and

Implement and perform a multi-component SEP that will provide assistance to local high schools in Puerto Rico and their governing districts through a series of assessments, reports, mentoring and outreach training seminars designed to improve environmental regulatory compliance and to reduce risks associated with chemical storage and usage and other facility practices that could impact children's health, and for this SEP Respondent is to spend at least \$150,000. (As required, this SEP has been reviewed and approved by EPA headquarters.)

The consent agreement establishes a mechanism whereby Respondent would be required to pay stipulated penalties if it fails timely to complete any of these SEPs and/or has other SEP-related deficiencies. Respondent is to certify that it has successfully performed the SEPs, and stipulated penalties are similarly triggered for any material misrepresentation Respondent makes in providing the requisite certifications.

In accordance with the guidelines set forth in the applicable RCRA penalty policy, the gravity-based penalty was overall reduced approximately 27%. Of this total, 20% was reduced for the good faith Respondent exhibited, as more fully detailed in the indented paragraphs below identified as "Scope of Injunctive Relief" and "Schedule for the Implementation of the Injunctive Relief." Further, in light of the penalty policy providing for up to a 10% reduction for a respondent's cooperation with the Agency during the enforcement process, EPA deemed that Respondent's cooperation during this period, which saved the time associated with finalizing a complaint, warranted an additional reduction in the gravity-based penalty of approximately 7%. These reductions lowered the initial penalty to approximately \$440,000. In accordance with SEP policy, Respondent was given a credit of 50% for the vacuum sweeper (a credit of \$90,000), an 80% credit for the Pelletizer Units (a credit of \$120,000) and an 80% credit for the outreach and assessment SEP (a credit of \$120,000). This totals a credit of \$330,000 for the \$480,000 Respondent is required to spend on the SEPs. The penalty amount Respondent is to pay, \$112,500, represents an amount slightly above the 25% amount the SEP policy stipulates must be collected as a civil penalty.

REASONS TO ACCEPT THE SETTLEMENT

The following dispositive considerations militate for acceptance of the settlement reached between the parties:

Scope of Injunctive Relief: In agreeing to perform the measures required under the consent agreement, Respondent has obligated itself to perform work that goes beyond what the law presently requires. More specifically, in agreeing to total enclosure of those portions of the facility from which the dust containing lead and/or other hazardous waste constituents are generated and the baghouse (the main structure through which fugitive dust emissions are captured), Respondent will substantially eliminate the amount of dust containing lead (or other hazardous waste constituents) that would be released into the environment, and there is no provision under RCRA that mandates that Respondent effect such total enclosure.

While total enclosure of the facility's main production will be required pursuant to the amendments to the National Emissions Standards for Hazardous Air Pollutants (NESHAP) for Secondary Lead Smelting, 77 *Fed. Reg.* 556 (January 5, 2012), such relief would not now (and for some time in the future) be available in a RCRA enforcement proceeding, whether such proceeding were litigated in an EPA administrative (40 C.F.R. Part 22) tribunal or in a federal court; at some future point in time, a court would have the authority to order total enclosure but only *if* the matter involved a Clean Air Act enforcement proceeding. Thus, through acceptance of this settlement, EPA is assured that Respondent's efforts to attain comprehensive compliance, including with RCRA standards, through means significantly beyond what could be attained through adjudication. Moreover, the consent agreement obliges the Respondent to meet more stringent dust control standards for non-production areas than are required under the final Clean Air Act rule.

Schedule for Implementation of the Injunctive Relief: The consent agreement establishes a schedule for Respondent to comply with its injunctive relief measures. With regard to the most salient aspect of the injunctive relief, the total enclosure requirement, Respondent is given slightly over one year from the date of the document's execution to complete the construction of the needed structures, with a similarly short schedule to attain interim measures. For example, Respondent is required to secure a contract for the purchase of the necessary equipment within ninety (90) days of the consent agreement's effective date, and it must have design plans (vendor drawings) in place thirty (30) days thereafter; actual construction is required to begin within the subsequent two months. Even assuming the rule will not be stayed as a result of a lawsuit challenging it, the rule necessarily provides a phase-in period for the regulated community to attain compliance. Under this consent agreement, the time for effecting such compliance has been expedited, and Respondent is required to implement total enclosure substantially in advance of the deadline in any eventual final rule.

Benefits Derived from the Three SEPs: Respondent has agreed to undertake three separate SEPs, and, in so agreeing, Respondent has obligated itself to spend close to \$500,000. None of these SEPs could be obtained through the administrative litigation process, and, viewed collectively, they represent a compelling reason for EPA to proceed with this settlement. The vacuum sweeper SEP and the Pelletizer Units represent concrete projects that will result in a healthier environment for the facility employees and the residents of the local community. The outreach and assessment SEP will constitute a vital part of EPA's overall efforts to inculcate awareness of the requirements in the handling and disposal of hazardous waste in Puerto Rico and to address problems that may be identified. As part of its efforts to broaden such awareness, Region 2 is attempting to promote outreach to foster increased compliance with the proper management practices for such waste, and this multi-component project is an integral component of this effort. As part of this SEP, Respondent will help establish and ensure that an Outreach and Assessment Team conduct assessments of high school facilities with school district officials to assist school district officials in: a) determining which

Commonwealth and federal regulatory requirements apply and b) developing waste disposal, pollution prevention, waste minimization, and product substitution plans based, at least in part, on regulatory requirements and best management practices. Training for school and district staff on environmental regulatory requirements and on means of implementing waste disposal, pollution prevention, waste minimization, and product substitution plans will be provided. Further, assessed facilities will be provided with assistance in developing a chemical action and disposal plan for surplus waste chemicals. The benefits the residents of the surrounding community, and also the residents of Puerto Rico, will derive from the outreach and assessment SEP, together with those benefits resulting from the other two SEPs, constitute an important consideration for acceptance of this settlement.

CONCLUSION

Given the considerations discussed above, program and legal staff recommend that you sign the Final Order incorporating the settlement.

The penalty agreed to and accepted by the parties in settlement of this matter is in accordance with the guidance set forth in the applicable RCRA penalty policy and the SEP policy. The Order will be issued upon consent.

Attachment

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Region 2

In the Matter of:

Battery Recycling Company, Inc.,
Respondent.

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

**CONSENT AGREEMENT
AND FINAL ORDER**

Docket No. RCRA-02-2012-7101

PRELIMINARY STATEMENT

This administrative proceeding is being instituted pursuant to Section 3008 of the Solid Waste Disposal Act, as amended by various statutes including the Resource Conservation and Recovery Act of 1976 and the Hazardous and Solid Waste Amendments of 1984 (“HSWA”), 42 U.S.C. § 6901 *et seq.* (collectively these statutes referred to as the “Act” or “RCRA”). The United States Environmental Protection Agency (“EPA”) has promulgated regulations governing the handling, management and disposal of hazardous waste at 40 C.F.R. Parts 260-279.

Section 3008 of RCRA, 42 U.S.C. § 6928, authorizes the Administrator of EPA to enforce violations of the Act and the regulations promulgated or authorized pursuant to it. Complainant in this proceeding, the Director of the Division of Enforcement and Compliance Assistance (“Complainant”) of EPA, Region 2, has been duly delegated the authority to institute this action.

Pursuant to Section 22.13 of the revised Consolidated Rules of Practice, 40 C.F.R. § 22.13(b), where parties agree to settlement of one or more causes of action before the filing of a Complaint, a proceeding may simultaneously be commenced and concluded by the issuance of a Consent Agreement and Final Order (“CA/FO”) pursuant to 40 C.F.R. §§ 22.18(b)(2) and (3).

It has been agreed by the parties that settling this matter by entering into this CA/FO pursuant to 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3) is an appropriate means of resolving specified claims against Respondent without further litigation. To that end, the parties have met and held several settlement discussions. This CA/FO is being issued pursuant to said provisions of 40 C.F.R. Part 22. No adjudicated findings of fact or conclusions of law, in either an administrative or judicial forum, have been made. The following constitute EPA’s findings of fact and conclusions of law based on information of which Complainant was aware as of December 1, 2011, and the recitation below of such

findings and conclusions is not intended, nor is it to be construed, as Respondent either admitting or denying such findings and conclusions.

EPA FINDINGS OF FACT

1. Respondent is the Battery Recycling Company, Inc., the owner and operator of a facility in Arecibo, Puerto Rico, which operates, *inter alia*, as a secondary lead smelter. Respondent has owned and operated the facility (hereinafter the "Facility") since 1996, and it first undertook secondary lead smelting operations at the Facility at the beginning of 2004.

2. Respondent is, and has been since 1996, a corporation organized pursuant to and existing under the laws of the Commonwealth of Puerto Rico. The Facility is located near the north coast of Puerto Rico, on Puerto Rico (PR) Highway 2 at the 72.2 kilometer marker, in the Cambalache Ward of Arecibo, Puerto Rico.

3. On or about October 31, 1996, Respondent formally requested issuance of an EPA Identification Number for hazardous waste activities it intended to conduct at the Facility, and in response thereto EPA issued the Facility EPA Identification Number PRR000004655.

4. Respondent's operations consist in large part of buying and collecting spent lead acid batteries to recover and resell the lead in large part to battery manufacturers.

5. Approximately 90 to 120 employees work at the Facility in three shifts, none of whom works on a part-time basis. The Facility operates 24 hours per day, seven days per week.

6. At the Facility, as part of its operations Respondent accepts approximately 3,000 tons of spent lead acid batteries each month.

7. In the course of Respondent's business operations at the Facility, it "reclaims" (as defined in 40 C.F.R. § 261.1(b)(4)) spent lead acid batteries through a process(es) other than re-generation.

8. At the Facility, as part of its operations, Respondent stages the spent lead acid batteries prior to reclaiming them.

9. At the Facility, as part of its operations, Respondent recycles approximately 75,000 gallons of on specification used oil per month in the lead furnaces and refining kettles used to reclaim the spent lead acid batteries.

10. In the course of its operations at the Facility, Respondent has generated (and continues to generate) "solid waste" (as that term has been defined in Section 1004(27) of the Act, 42 U.S.C. § 6903(27),¹ and 40 C.F.R. §261.2), and "hazardous waste" (as that term has been defined in Section 1004(5) of the Act, 42 U.S.C. § 6903(27), and 40 C.F.R. §261.3).

¹ Any word or words defined with reference to statutory and/or regulatory provisions are subsequently used throughout this document as so defined.

11. The following are included among the aforementioned solid wastes Respondent has generated (and in some cases continues to generate) in the course of conducting the operations of the Facility:

- a) dust generated by air pollution control equipment for the furnaces, *i.e.* dust generated through the capture of both emissions from the smelter's furnaces (furnace flue dust) and emissions generated from lead refining taking place in kettles, such capture occurring in flue gas and dust management systems using baghouse operations (hereinafter, the combined furnace flue dust and refining kettle dust referred to as "baghouse dust");
- b) baghouse dust mixed with wet lead oxide and damp lead oxide (this is no longer generated);
- c) large particle waste generated in the large particle collectors;
- d) plastic chips generated from the crushing and breaking of lead acid batteries in a hammermill or in any other battery breaking operation (which may remain or become contaminated by lead under certain conditions);
- e) spent fluorescent, spent high intensity light bulbs and any other spent mercury-containing light bulbs (Respondent currently purchases only fluorescent bulbs containing a low level of mercury, and Respondent has instituted a program for the recycling of all fluorescent bulbs); and
- f) personal protective equipment (hereinafter "PPE") that had been used by the employees of the Facility and which became, as a consequence of such use, spent (*i.e.* no longer useful for the original intended purpose of such equipment).

12. At the Facility, spent and/or broken fluorescent bulbs and other mercury-containing lamps had been from time to time in the past discarded as part of ordinary trash in a dumpster.

13. Respondent at the Facility generated, *inter alia*, the following hazardous waste:

- a) approximately eight to 10 containers of baghouse dust, each such container capable of holding about 187 gallons, generated per day, which is recycled as part of the Facility's manufacturing process; and
- b) a number of tons per month of wastewater treatment sludge generated at the Facility, which sludge is generated from the treatment of, *inter alia*, spent battery acid, collected facility wastewater and stormwater, and laboratory wastes.

14. The aforementioned hazardous waste contained, *inter alia*, lead.

15. On each of the following dates, a duly designated representative(s) of EPA conducted an inspection of the Facility to determine its compliance with applicable statutory and regulatory requirements for, *inter alia*, lead smelting operations: (a) February 23, 2010; (b) July 14, 2010; and (3) March 28, 2011. Such inspections were conducted pursuant to the authority given EPA by Section 3007

of the Act, 42 U.S.C. § 6927.

16. Prior to 2010, in an unknown manner, Respondent disposed of spent high intensity light bulbs generated at the Facility.

17. As of each of the inspection dates (and for a period of time prior and subsequent to each such date), Respondent failed to determine in accordance with 40 C.F.R. § 262.11 (or to have a third party determine on its behalf) whether the aforementioned spent high intensity light bulbs constituted a hazardous waste.

18. Prior to 2010, Respondent failed to determine (or to have a third party determine on its behalf) whether spent fluorescent light bulbs stored and accumulated at the Facility constituted hazardous waste.

19. At the time of each of the inspection dates (and for a period of time prior and subsequent to each such date), Respondent was storing the following hazardous waste in open containers, and hazardous waste was neither being added nor removed from such containers, as follows:

- a) baghouse dust had been (but no longer is) stored in open containers inside a covered building, each such container capable of holding 187 gallons;
- b) mixtures of baghouse dust, wet lead oxide, and damp lead oxide have previously been stored and otherwise managed in open storage bins;
- c) spent nickel-cadmium batteries were stored in a number of large, open, wooden bins; and
- d) wastewater treatment sludge that had been generated from, including the treatment of, *inter alia*, spent battery acid, wastewater and stormwater collected at the Facility, and laboratory wastes were stored in open, reinforced bags.

20. In the past, on a regular basis, Respondent moved full, but open, containers of baghouse dust from the site of its generation to the lead storage and staging area, thus having potentially exposed the dispersal and escape of such dust.

21. On a regular basis, Respondent, using a front loader, fed into the Facility's furnaces a mixture of, *inter alia*, baghouse dust, scrap lead and lead oxides in a manner exposing such mixtures to the wind.

22. At the time of the July 14, 2010 inspection, the large steel collection tank inside one baghouse storage building was filled and overflowing with baghouse dust, with such dust covering the floor, walls and curtain of the immediate area as well as covering part of the entry/egress ramp, and these circumstances exposed such baghouse dust to release and dispersal.

23. At the time of the March 28, 2011 inspection, in a baghouse storage building behind the lead smelting operations, baghouse dust covered the floor and walls, and extended to the outside of said building, with visible release.

24. On a regular basis, Respondent at the Facility additionally has generated (and continues to generate) dust containing, *inter alia*, lead through a number of activities that are conducted in structures not fully enclosed, including the following:

- a) the storage of lead-containing wastes;
- b) the cleaning and maintenance of dust collection systems, *e.g.*, baghouse;
- c) the rotation of lead and lead oxide waste piles; and
- d) the pouring, moving, and dumping of lead smelting slag and lead refining dross.

25. On a regular basis, other procedures and practices at the Facility have generated dust containing, *inter alia*, lead, including the following:

- a) the handling of laundry;
- b) the handling and storage of PPE; and
- c) the evaporation of washwater and stormwater runoff through open air conveyance pathways (*i.e.* asphalt roadway) and open, flooded soil and earthen pits.

26. Additional methods and means by which dust containing, *inter alia*, lead generated at the Facility from its numerous lead-containing waste and product management operations presented a risk of off-site dispersal and dissemination have included:

- a) direct conveyance in stormwater and wastewater off-site releases;
- b) wind-blown dust and other fugitive emissions (on-site construction activities may contribute);
- c) vehicle movement on and off-site (*e.g.*, dust on tires); and
- d) employee transfer of lead dust on personal use items such as clothing, footwear and work boots, both directly and through contamination of personal vehicles.

27. Each of the aforementioned circumstances presented a risk of off-site transport, dispersal, release, escape and dissemination of dust containing, *inter alia*, lead into the environment, including the air and water.

28. The aforementioned processes involved materials that constituted, in whole or in part, hazardous waste or "hazardous waste constituents" (as defined in 40 C.F.R. § 260.10).

29. Wastewater generated in the course of operations at the Facility and treated at the Facility's wastewater treatment plant consisted of (and still consists of), in whole or in part, water that was used and contaminated during the course of the following processes and procedures, or otherwise resulted from:

- a) lead-contaminated spent battery acid;
- b) the laundering of worker clothing;
- c) the washing of PPE, *e.g.*, respirators, hard hats, boots wash station, gloves;
- d) the disposal of small quantities of waste chemicals from the on-site laboratory;
- e) workers washing their hands at sinks whose effluent is directed to the wastewater treatment plant;
- f) workers showering in facilities whose effluent is directed to the wastewater treatment plant;
- g) cleaner solvent that had been used for vehicles and equipment in the maintenance area, which solvent consequently became spent;
- h) water used to wash into the wastewater treatment system spills of diesel fuel and used oil from, *inter alia*, vehicles and equipment being serviced in the Facility's maintenance area;
- i) the washing, cleaning and suppressing of the dust resulting from battery loading, conveyor belt and hammermill operations (including water leaking from such operations), and battery acid conveyance; and
- j) water used to wash down, clean and/or suppress dust from various processes, including combined furnace flue and refining kettle dust collection (*i.e.* baghouses), the not fully enclosed lead oxide piles; the not fully enclosed storage and management of the following: wastewater treatment sludge; coke; and residual slag and dross.

30. Prior to at least March 28, 2011, stormwater at the Facility included stormwater from at least the following: a) used oil receiving and storage areas; b) baghouses; and c) the not fully enclosed storage and management of each of wastewater treatment sludge, coke, and slag and dross.

31. Through at least March 28, 2011, wastewater and stormwater runoff from the lead smelting operations at the Facility was discharged to its wastewater treatment plant through stormwater drainage control that was directed into a complex consisting of an open, below-grade sump, collection basin and pump systems.

32. At the time of the February 23, 2010 inspection:

a) the eastern sump/collection basin/pump system was overflowing and releasing wastewater and stormwater; and

b) stormwater and wastewater run-off from around the Facility's smelting furnaces was not being conveyed to the facility's wastewater treatment system but was going directly onto the area soil behind the furnace control room.

33. At the time of the July 14, 2010 inspection, the southern sump/collection basin/pump system was overflowing and releasing wastewater and stormwater.

34. Each of the circumstances alleged above facilitated and promoted the release of stormwater and wastewater into the environment.

35. The aforementioned stormwater and wastewater contained and carried hazardous waste and/or hazardous waste constituents.

36. As a result of the operations at the Facility, Respondent generated a number of tons per month of wastewater treatment sludge as a product of the treatment of, *inter alia*, spent battery acid, collected facility wastewater and stormwater and sundry laboratory wastestreams.

37. The aforementioned wastewater treatment sludge was a hazardous waste containing, *inter alia*, lead and cadmium.

38. At the time of the March 28, 2011 inspection, Respondent was using heavy construction equipment to transfer wastewater treatment sludge out of a holding basin and into a paved area, with said operation occurring in the open and with visible sludge spillage.

39. The aforementioned transfer of wastewater treatment sludge was conducted in such a manner as to risk the escape and dissemination of such sludge into the environment.

40. Respondent accumulated at the Facility the following hazardous wastes: a) baghouse dust; b) mixtures of baghouse dust, wet lead oxide and damp lead oxide; c) spent nickel-cadmium batteries; c) large, industrial, lead-acid batteries; and d) wastewater treatment sludge.

41. The accumulation of the aforementioned hazardous waste occurred without any indication of when the accumulation of such respective waste had begun.

42. The accumulation of the aforementioned hazardous waste occurred without the container or tank (or other type of object holding such waste) being clearly marked or labeled with the words hazardous waste.

43. Respondent accumulated at the Facility hazardous waste, *i.e.* wastewater treatment sludge, for more than 90 days during the period commencing no later than February 1, 2011 and running through (at least) May 12, 2011.

44. Respondent was never granted an exemption to accumulate the aforementioned wastewater treatment sludge for more than 90 days.

45. The accumulation of the wastewater treatment sludge did not indicate when such accumulation began, nor was there any indication where such sludge was held that the contents constituted hazardous waste.

46. Respondent has accumulated large, heavy industrial, lead-acid batteries on the floor of the Facility (under the conveyor system and in the old industrial battery area) prior to Respondent reclaiming them, with no indication of when such accumulation began or the length of such accumulation.

47. Respondent operates at the Facility a wastewater treatment system that conducts acid neutralization (as defined in 40 C.F.R. § 260.10).

48. The aforementioned wastewater treatment system consists, in part, of detention and sedimentation basins and tanks, a sump and pump basins, an acid neutralization portion, a lead precipitation process, a filtration system, a wastewater treatment sludge recovery and removal process, and battery acid accumulation systems and conveyance systems together with ancillary equipment.

49. The treated wastewater is reused for operations at the Facility.

50. The wastewater treatment system at the Facility receives and treats hazardous waste.

51. The wastewater treatment system at the Facility is not an exempt system.

52. Respondent has never met the applicable requirements of Section 3005 of the Act, 42 U.S.C. § 6925, or 40 C.F.R. § 270.1.

53. As of March 28, 2011, Respondent had failed to provide facility personnel responsible for hazardous waste management with classroom instruction or on-the-job training that teaches them to perform their duties in a way that ensures the Facility's compliance with hazardous waste management regulations mandated by 40 C.F.R. Part 264, nor had Respondent provided the facility personnel with training or instruction on how to effectively respond to emergencies involving hazardous waste.

54. As of March 28, 2011, Respondent had failed to provide an annual review of the training set forth in paragraph 53 of this section, above.

55. As of February 23, 2010, Respondent failed to have prepared a complete contingency plan for the Facility in that none of the plans Respondent had developed up until that time sufficiently incorporated the applicable hazardous waste management requirements and provisions, including the failure to list the home addresses of designated emergency coordinators.

56. In the course of operations at the Facility, Respondent treated lead-contaminated spent battery acid generated at the Facility at the Facility's wastewater treatment plant.

57. As of March 28, 2011, Respondent failed to complete and consequently to put in the Facility's file the Land Disposal Restriction (LDR) notice and certification specified by 40 C.F.R. §§ 268.9(d) and/or 268.7(a)(7) for the aforementioned lead-contaminated spent battery acid.

58. At times prior to January 2011, Respondent disposed of wastewater treatment sludge generated at the Facility from the treatment of, *inter alia*, spent battery acid, at a non-hazardous waste solid waste disposal facility, the Ponce Landfill in Puerto Rico. Respondent had previously done characterizations that showed such waste to be non-hazardous.

59. For the initial shipment to the Ponce Landfill, Respondent failed to provide the LDR notice specified by 40 C.F.R. § 268.7(a)(2).

60. As of March 28, 2011, the wastewater treatment sludge referenced in paragraph 58, above, exceeded the applicable land disposal restriction standard set forth in Table 1 of 40 C.F.R. § 268.40 (*i.e.* 0.75 mg/L).

61. As a consequence of the aforementioned, Respondent sent off-site for land disposal wastewater treatment sludge without such waste having first met the treatment standards set forth in 40 C.F.R. § 268.40(e).

EPA CONCLUSIONS OF LAW

1. This is an action pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), to assess a civil penalty against Respondent for past violations of the requirements of Subchapter III of RCRA, 42 U.S.C. §§ 6921 - 6939e, and to require future compliance with said requirements.

2. Pursuant to Section 3008(a)(1) of RCRA, 42 U.S.C. § 6928(a)(1), whenever any person has violated or is in violation of a requirement of Subchapter III of RCRA, 42 U.S.C. §§ 6921 - 6939e, the Administrator of EPA, *inter alia*, "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."

3. Respondent is 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.

4. Respondent has been (and continues to be) a "generator" (as defined in 40 C.F.R. § 260.10) of hazardous waste as more specifically set forth in the "EPA Findings of Fact" section, above.

5. The Facility constitutes a "facility" (as defined in 40 C.F.R. § 260.10).

6. The Facility constitutes a "new hazardous waste management facility" (as defined in 40 C.F.R. § 260.10).

7. Parts of the Facility include one or more "hazardous waste management unit[s]" (as defined in 40 C.F.R. § 260.10 and 40 C.F.R. § 270.2).

8. In the course of Respondent's business operations at the Facility, it "reclaims" (as defined in 40 C.F.R. § 261.1(b)(4)) spent lead acid batteries.

9. The aforementioned spent lead acid batteries accepted by the Facility are solid wastes because:

a) they are "abandoned" (as defined in 40 C.F.R. § 261.2(b)(1)) by virtue of their being disposed at the Facility; and/or

b) they are being reclaimed within the meaning of 40 C.F.R. § 261.2(a)(3).

10. In relevant part, 40 C.F.R. § 266.80(a) provides that a person who reclaims lead acid batteries and who stores such batteries is subject to the requirements of, *inter alia*, 40 C.F.R. § 266.80(b); 40 C.F.R. § 262.11; 40 C.F.R. Part 268; the applicable provisions of 40 C.F.R. Part 265, Subpart B, C, D and I; and 40 C.F.R. Part 270.

11. Pursuant to 40 C.F.R. § 262.11, any "person who generates a solid waste, as defined in 40 CFR § 261.2, must determine if that waste is a hazardous waste" using the method specified therein.

12. Prior to 2010, Respondent failed to make the hazardous waste determination (or to have a third party make the determination on its behalf) for the solid wastes referenced in paragraphs 16, 17 and 18 of the "EPA Findings of Fact," above, with each such failure constituting a violation of 40 C.F.R. § 262.11, a requirement of Subchapter III of RCRA, 42 U.S.C. §§ 6921 - 6939e.

13. Pursuant to 40 C.F.R. § 264.173(a), "[a] container holding hazardous waste must always be closed during storage, except when it is necessary to add or remove waste."

14. Respondent's storage of hazardous waste in open containers, as noted in paragraph 19 of the "EPA Findings of Fact," above, constituted a violation of 40 C.F.R. § 264.173(a), a requirement of Subchapter III of RCRA, 42 U.S.C. §§ 6921 - 6939e.

15. Pursuant to 40 C.F.R. § 264.31, "[f]acilities must be maintained and operated to minimize the possibility of a fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water which could threaten human health or the environment."

16. Each of Respondent's practices, as alleged in paragraphs 20 through 39 of the "EPA Findings of Fact," above, constituted a failure by Respondent to maintain and operate the Facility so as to minimize the possibility of a fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water which could threaten human health or the environment, a violation of 40 C.F.R. § 264.31, a requirement of Subchapter III of RCRA, 42 U.S.C. §§ 6921 - 6939e.

17. In order to treat, store or dispose of hazardous waste, the owner or operator of a hazardous waste management unit must comply with the applicable requirements of Section 3005 of RCRA, 42

U.S.C. § 6925, and 40 C.F.R. § 270.1.

18. Pursuant to 40 C.F.R. § 262.34(a), in relevant part, a generator may accumulate hazardous waste on-site for 90 days or fewer without having to meet the requirements set forth in paragraph 17 of this section, above, provided that, *inter alia*:

a) the date upon which each period of accumulation begins is clearly marked and visible for inspection on each container; and

b) while the waste is being accumulated on-site, each container or tank holding the hazardous waste is labeled or marked clearly with the words, "Hazardous Waste."

19. In relevant part, 40 C.F.R. § 262.34(b) provides that a generator of hazardous waste who accumulates hazardous waste for more than 90 days is deemed an operator of a storage facility and is subject to the requirements of 40 C.F.R. Parts 264 and 265, and is also subject to the requirements of 40 C.F.R. Part 270.

20. Respondent's aforementioned accumulation of hazardous waste without meeting conditions allowing such storage as set forth in 40 C.F.R. 262.34(a), constitutes a violation of each of:

a) Section 3005 of RCRA, 42 U.S.C. 6925, a requirement of Subchapter III of RCRA, 42 U.S.C. §§ 6921 - 6939e; and

b) 40 C.F.R. § 270.1, a requirement of Subchapter III of RCRA, 42 U.S.C. §§ 6921 - 6939e.

21. Respondent's aforementioned accumulation of hazardous waste for over 90 days did not comply with all requirements of 40 C.F.R. Part 264, nor did it comply with the applicable requirements of Section 3005 of RCRA, 42 U.S.C. 6925, and 40 C.F.R. Part 270.

22. As a consequence of Respondent's accumulation of hazardous waste at the Facility for over 90 days, Respondent violated each of:

a) Section 3005 of RCRA, 42 U.S.C. 6925, a requirement of Subchapter III of RCRA, 42 U.S.C. §§ 6921 - 6939e; and

b) 40 C.F.R. 270.1, a requirement of Subchapter III of RCRA, 42 U.S.C. §§ 6921 - 6939e.

23. Pursuant to each of the following provisions, a person may not treat or dispose of hazardous waste unless that person has first complied with the applicable requirements set forth in paragraph 17 of this section, above.

24. Respondent's failure to comply with the requirements set forth in paragraph 17 of this section, above, constitutes a violation of each of the following provisions, each of which is a

requirement of Subchapter III of RCRA, 42 U.S.C. §§ 6921 - 6939e:

a) Section 3005 of RCRA, 42 U.S.C. § 6925; and

b) 40 C.F.R. § 270.1

25. Pursuant to 40 C.F.R. § 264.16(a), at a facility that treats, stores or disposes of hazardous waste, employees of such a facility involved in hazardous waste management must successfully complete a program of classroom instruction or on-the-job training that teaches them to perform their employment duties in such a way that ensures the facility's compliance with the requirements of 40 C.F.R. Part 264, and any such program must include the elements described in 40 C.F.R. § 264.16(d)(3).

26. Pursuant to 40 C.F.R. § 264.16(b), the personnel employed at a facility that treats, stores or disposes of hazardous waste must, in relevant part, successfully complete the program specified in 40 C.F.R. § 264.16(a) within six months after the commencement of their employment at or assignment to the facility.

27. Pursuant to 40 C.F.R. § 264.16(c), facility personnel must participate in an annual review of the training mandated by 40 C.F.R. § 264.16(a).

28. The failure of Respondent to ensure that the personnel employed at or assigned to the Facility and who are responsible for hazardous waste management received the required training within six months of their employment or assignment to the Facility in order that they be able to perform their duties in a way that ensures the facility's compliance with hazardous waste management regulations constitutes a violation of:

a) 40 C.F.R. § 264.16(a), a requirement of Subchapter III of RCRA, 42 U.S.C. §§ 6921 - 6939e; and

b) 40 C.F.R. § 264.16(b), a requirement of Subchapter III of RCRA, 42 U.S.C. §§ 6921 - 6939e.

29. Respondent's failure to ensure that facility personnel at the Facility responsible for hazardous waste management receive the annual review of the initial training constitutes a violation of 40 C.F.R. § 264.16(c), a requirement of Subchapter III of RCRA, 42 U.S.C. §§ 6921 - 6939e.

30. Pursuant to 40 C.F.R. § 264.51(a), the owner or operator of a hazardous waste facility (such as the Facility) must have a contingency plan for the facility that is designed to minimize hazards to human health or the environment from fires, explosions, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil or surface water.

31. Pursuant to 40 C.F.R. § 264.51(b), the provisions of a facility's contingency plan must be carried out immediately whenever there occurs a fire, explosion, or release of hazardous waste or hazardous waste constituents that could threaten human health or the environment.

32. Pursuant to 40 C.F.R. § 264.52(b), if the owner or operator of a hazardous waste facility already has in place a Spill Prevention, Control, and Countermeasures (SPCC) Plan in accordance with 40 C.F.R. Part 112, or some other emergency or contingency plan, said owner or operator need only amend the existing SPCC plan to incorporate hazardous waste management provisions that are sufficient to comply with the requirements of 40 C.F.R. Part 264.

33. Forty C.F.R. § 264.52(b) additionally provides that the owner or operator of a hazardous waste facility may develop a single contingency plan that meets all regulatory requirements.

34. Pursuant to 40 C.F.R. § 264.52(d), the contingency plan(s) for a hazardous waste facility must list the names, addresses and phone numbers (both office and home) of all persons qualified to act as emergency coordinators (in accordance with 40 C.F.R. § 264.55, and such list must be kept up-to-date.

35. Pursuant to 40 C.F.R. § 264.53(b), a copy of the requisite contingency plan for a hazardous waste facility must be submitted to all local police and fire departments, hospitals, and State (Commonwealth) and local emergency response teams that might be called upon to provide emergency services.

36. The plans Respondent had prepared by February 23, 2010 failed to minimize hazards to human health or the environment from fires, explosions, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil or surface water, a violation of 40 C.F.R. § 264.51(a).

37. The plans Respondent had prepared by February 23, 2010 failed to list the home addresses of the designated emergency coordinator(s), a violation of 40 C.F.R. § 264.52(d).

38. Each of the following is a requirement of Subchapter III of RCRA, 42 U.S.C. §§ 6921 - 6939e: a) 40 C.F.R. § 264.51(a), and b) 40 C.F.R. § 264.52(d).

39. Pursuant to 40 C.F.R. § 268.7(a), generators of hazardous waste have to determine whether the waste has to be treated before it can be land disposed.

40. Pursuant to 40 C.F.R. § 268.9(d), wastes that exhibit a characteristic are also subject to 40 C.F.R. § 268.7 requirements, except that once the waste is no longer hazardous, a one-time notification and certification must be placed in the generator's or treater's on-site files. The notification and certification must be updated if the process or operation generating the waste changes and/or if the subtitle D facility receiving the waste changes.

41. Pursuant to 40 C.F.R. § 268.7(a)(2), if a hazardous waste does not meet the treatment standards in 40 C.F.R. §§ 268.40, 268.45 or 268.49, or if the generator chooses not to make the determination whether the waste generated at its facility must be treated, with the initial shipment to each treatment or storage facility, the generator must send a one-time written notice (a "Land Disposal Restriction Notice" or "LDR notice") to each treatment or storage facility receiving the waste.

42. The aforementioned LDR Notice must comply with the “268.7(a)(2)” column in 40 C.F.R. § 268.7(a)(4).

43. Pursuant to 40 C.F.R. § 268.40(a), a hazardous waste otherwise prohibited from land disposal may in fact be land disposed provided it meets the requirements set forth in the table in said section, and, for each waste, the table identifies one of three types of treatment standard requirements, as follows:

- a) All hazardous constituents in the waste or in the treatment residue must be at or below the values found in the table for that waste;
- b) The hazardous constituents in the extract of the waste or in the extract of the treatment residue must be at or below the values found in the table; or
- c) The waste must be treated using the technology specified in the table, which are described in fuller detail in Table 1 of 40 C.F.R. § 268.42.

44. Respondent’s failure to complete and put into the Facility’s files a one-time notification and certification, as alleged in paragraph 57 of the “EPA Findings of Fact,” above, constitutes a violation of 40 C.F.R. §§ 268.7(a)(7) and/or 268.9(d), each a requirement of Subchapter III of RCRA, 42 U.S.C. §§ 6921 - 6939e.

45. Respondent’s failure to provide a written LDR notice to the Ponce Landfill in Puerto Rico, as alleged in paragraph 59 of the “EPA Findings of Fact,” above, constitutes a violation of 40 C.F.R. 268.7(a)(2), a requirement of Subchapter III of RCRA, 42 U.S.C. §§ 6921 - 6939e.

46. Respondent’s failure to meet the treatment standards for the wastewater treatment sludge, as alleged in paragraphs 60 and 61 of the “EPA Findings of Fact,” above, constitutes a violation of 40 C.F.R. § 268.40(e), a requirement of Subchapter III of RCRA, 42 U.S.C. §§ 6921 - 6939e.

AGREEMENT ON CONSENT

Based upon the foregoing, and pursuant to Section 3008 of RCRA, 42 U.S.C. § 6928, and 40 C.F.R. § 22.18 of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, 40 C.F.R. Part 22, it is hereby agreed by and between Complainant, and voluntarily accepted by Respondent, that Respondent, for purposes of this Consent Agreement and in the interest of settling this matter expeditiously without the time, expense or uncertainty of a formal adjudicatory hearing on the merits: (a) admits the jurisdictional allegations set forth herein; (b) neither admits nor denies the non-jurisdictional allegations set forth herein; (c) neither admits nor denies the “EPA Findings of Fact” or “EPA Conclusions of Law” set forth herein; (d) consents to the assessment of the civil penalty as set forth below; (e) consents to the issuance of the Final Order accompanying this Consent Agreement; (f) waives its right to seek or obtain judicial review of, or otherwise contest, said Final Order; (g) consents to perform and complete the Supplemental Environmental Projects as set forth herein and in accordance with the schedule set forth herein; and (h) consents to the payment of any stipulated penalty(ies) in accordance with the terms and conditions as set forth herein.

Pursuant to 40 C.F.R. § 22.31(b), the executed CA/FO shall become effective and binding when it is filed with the Regional Hearing Clerk of the United States Environmental Protection Agency, Region 2 (such date henceforth referred to as the "effective date").

It is further hereby agreed by and between Complainant and Respondent, and voluntarily accepted by Respondent, that there shall be compliance with the following terms and conditions:

1. Respondent shall pay a civil penalty to EPA in the amount of **ONE HUNDRED TWELVE THOUSAND FIVE HUNDRED (\$112,500.00) DOLLARS**, to be paid in accordance with the terms and schedule set forth in paragraph 2, below. Payment in accordance with the provision set forth below shall be made by cashier's checks, certified checks or by electronic fund transfers (EFT). If payment is made by cashier's checks or by certified checks, such checks shall be made payable to the "**Treasurer, United States of America,**" and shall be identified with a notation thereon listing the following: *In the Matter of Battery Recycling Company, Inc., Docket Number RCRA-02-2012-7101*. Checks making payment shall be mailed to the following address:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, Missouri 63197-9000

Alternatively, if Respondent chooses to make each installment payment by EFT, Respondent shall then provide the following information to its remitter bank:

- a. Amount of Payment
- b. SWIFT address: **FRNYUS33, 33 Liberty Street, New York, New York 10045**
- c. Account Code for Federal Reserve Bank of New York receiving payment: **68010727**
- d. Federal Reserve Bank of New York ABA routing number: **021030004**
- e. Field Tag 4200 of the Fedwire message should read: **D 68010727 Environmental Protection Agency**
- f. Name of Respondent: **Battery Recycling Company, Inc.**
- g. Case docket number: **RCRA-02-2012-7101**

2. Payment shall be received (if made by checks) or effected (if implemented by EFT) as follows:

- a) The first installment of **TWENTY-EIGHT THOUSAND ONE HUNDRED**

TWENTY-FIVE (\$ 28,125.00) DOLLARS is to be received within 90 days of the effective date of this CA/FO (such date when this first installment payment is due henceforth referred to as the "due date");

b) The second installment of TWENTY-EIGHT THOUSAND ONE HUNDRED TWENTY-FIVE (\$ 28,125.00) DOLLARS is to be received within one hundred eighty (180) days after the due date;

c) The third installment of TWENTY-EIGHT THOUSAND ONE HUNDRED TWENTY-FIVE (\$ 28,125.00) DOLLARS is to be received two hundred seventy (270) days after the due date; and

d) The fourth installment of TWENTY-EIGHT THOUSAND ONE HUNDRED TWENTY-FIVE (\$ 28,125.00) DOLLARS is to be received three hundred sixty five (365) days after the due date.

Payment shall be made in accordance with the instructions set forth in paragraph 1 of this section, above. If Respondent makes payments by cashier's check or certified check, then such checks shall be *received* at the above-listed address on or before the date specified. If Respondent makes payment by the EFT method, then each EFT shall be *received* on or before the date specified.

3. Whether Respondent makes payments by cashier's checks, certified checks or by the EFT method, Respondent shall promptly thereafter furnish reasonable proof that such payment has been made, and such proof shall be furnished to each of:

Lee A. Spielmann
Assistant Regional Counsel
Environmental Protection Agency, Region 2
290 Broadway, 16th floor
New York, New York 10007-1866

Karen Maples, Regional Hearing Clerk
Environmental Protection Agency, Region 2
290 Broadway, 16th floor
New York, New York 10007-1866

4. Failure to pay the amount in full (for each installment and for the total amount) within the time period set forth above may result in referral of this matter to the United States Department of Justice or the United States Department of the Treasury for collection.

5. Furthermore, if each payment is not made on or before the date when such payment is made due under the terms of this document, interest for said payment shall be assessed at the annual rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717, on the overdue amount from the date said payment was to have been made through the date said payment has been received. In addition, a late payment handling charge of \$15.00 will be assessed for each 30 day period or any

portion thereof, following the date such payment was to have been made, in which payment of the amount remains in arrears. In addition, a 6% per annum penalty will be applied to any principal amount that has not been received by the EPA within 90 days of the date for which each such payment was required hereto to have been made.

6. The civil penalty provided for in this section, any charge that accrues as a result of untimely payment(s) of the civil penalty by Respondent, any stipulated penalty(ies) to be paid in accordance with the terms and conditions of this CA/FO and any other penalty for failure to successfully complete any of the Supplemental Environmental Projects as set forth below constitute a penalty within the meaning of 26 U.S.C. § 162(f).

7. With respect to any costs or expenditures incurred in performing and completing any Supplemental Environmental Project(s) as set forth below, for income tax purposes, Respondent agrees that it shall neither capitalize into inventory or basis nor deduct any such costs or expenditures.

8. As of the effective date of this CA/FO, Respondent (or some third party acting on behalf of Respondent) shall in accordance with 40 C.F.R. § 262.11, make the determination whether solid wastes generated at or by the Facility in the course of its operations constitute hazardous waste, and any such determinations shall be made at least once per year (unless a different schedule is set forth in a subparagraph of this paragraph, below, or is later approved by EPA pursuant to paragraph 98 of this section, below), and whenever a material or process change(s) at the Facility may affect a hazardous waste characterization. Respondent shall maintain records on how any such determinations were made whether such solid wastes constitute (or do not constitute) a listed or characteristic hazardous waste. Such solid wastes shall include but are not necessarily limited to the following wastes generated at or by the Facility:

- a) plastic chips generated from the crushing and breaking of lead acid batteries in a hammermill or in any other battery breaking operation;
- b) spent high intensity light bulbs and any other spent light bulbs potentially subject to RCRA regulation as hazardous waste;²
- c) personal protective equipment that had been used by the employees of the Facility and which became, as a consequence of such use, spent (*i.e.* no longer useful for the original intended purpose of such equipment);
- d) waste generated from the clean-up of lead and/or dust containing other "RCRA constituents" (for purposes of this order, the term "RCRA constituents" shall mean any hazardous constituent listed in Appendix VIII of 40 C.F.R. Part 261), including, *e.g.*,

² Regarding spent light bulbs, Respondent shall make a new determination for each model of light bulb purchased for use at the Facility, as such new model would constitute, for purposes of this CA/FO, a material or process change. In making such determinations, Respondent may rely upon the manufacturer's own determinations for that model to the extent these state (or have information relevant to) whether the bulbs, when spent, would be a hazardous waste. (The manufacturer's own determinations are often included with the Material Safety Data Sheets [MSDS].)

vacuum cleaner bags, dust filters and washwater; and

e) wastewater treatment sludge and smelting furnace slag (such determinations shall be made at least once per calendar year quarter [*i.e.* every three months] and whenever a material or process change(s) at the Facility may affect a hazardous waste characterization).

9. As of the effective date of this CA/FO, to the extent not already done, whenever Respondent stores hazardous waste in containers at the Facility, whether such waste has been generated by or at the Facility or otherwise is present (including but not limited to any of the following hazardous waste listed below), such waste shall be stored in closed containers that are properly labeled (including the requirement that the label include the words "Hazardous Waste" and other words identifying the contents, and that the label indicate when the period of accumulation of such waste(s) began), and such containers must be kept closed at all times except when it is necessary to add or remove waste:

- a) baghouse dust from the Facility's air pollution control system;
- b) mixtures of baghouse dust, wet lead oxide, and damp lead oxide (except as allowed in charge mixing for immediate smelting);
- c) large particle waste collected in the Facility's air pollution control system;
- d) spent nickel-cadmium batteries;
- e) acid from spent lead acid batteries; and
- f) wastewater treatment sludge (to the extent such waste is classified as hazardous waste).

For any container(s) Respondent uses at the Facility to store hazardous waste, such container(s) must not be opened, stored, handled or stored in a manner that might rupture or otherwise compromise the physical integrity of the container or cause it to leak or otherwise allow the stored waste to escape.

10. Respondent shall manage baghouse dust and large particle waste on-site as hazardous waste.

11. Upon the effective date of this CA/FO, Respondent shall comply with applicable Land Disposal Restriction requirements and prohibitions set forth in 40 C.F.R. Part 268 for hazardous waste, including but not limited to hazardous waste sent off-site for treatment or disposal and hazardous waste treated or disposed on-site (*e.g.*, spent battery acid). To the extent Respondent has already complied with said requirements and prohibitions, it shall continue to do so. Regarding wastewater treatment sludge, if Respondent determines such sludge to be neither a listed nor characteristic hazardous waste, Respondent shall then:

- a) Dispose of said sludge in a lined landfill cell that is permitted to receive industrial waste;

b) Provide all relevant information on the types and expected quantities of the hazardous constituents in said sludge to the recycling or disposal facility in order to facilitate protective management, and, if necessary, further treat the lead and other hazardous constituents; and

c) Respondent shall maintain records of any determination it makes whether such wastewater treatment sludge constitutes (or does not constitute) a listed or characteristic hazardous waste.

12. Upon the effective date of this CA/FO, with regard to the following activities, processes and operations that occur at the Facility, Respondent shall perform, conduct and/or carry them out in such a way and in such manner so as to eliminate or otherwise minimize to the fullest extent possible the release to air, soil or surface water of lead and/or dust containing other RCRA constituents:

a) the storage of lead-containing wastes in open-air bins;

b) the cleaning, waste removal and maintenance of dust collection systems, *e.g.*, baghouses;

c) charge mixing;

d) the rotation of lead and lead oxide waste piles;

e) the various phases of battery processing operations, including but not limited to the loading of batteries on conveyor belts and the crushing of batteries through hammermill operations;

f) the pouring, moving and dumping of lead smelting slag, and lead refining dross;

g) the handling of laundry;

h) the handling and storage of PPE;

i) on-site construction activities that disturb soil;

j) the evaporation of washwater and stormwater runoff through open-air conveyance pathways (*e.g.*, asphalt roadways) and open, flooded soil and earthen pits;

k) direct conveyance in stormwater and wastewater off-site releases;

l) wind-blown fugitive emissions, including but not necessarily limited to lead and/or dust containing other RCRA constituents;

m) vehicle movement on- and off-site (*e.g.*, dust on tires); and

n) employee transfer of lead and/or dust containing other RCRA constituents on personal-use items such as clothing, footwear and work boots, both directly and through contamination of personal vehicles.

13. Upon the effective date of this CA/FO, Respondent shall take all necessary measures to prevent, or at least minimize to the fullest extent possible, the release of lead and/or dust containing other RCRA constituents resulting from evaporation that occurs during or in the course of wastewater and stormwater runoff from the lead smelting operations at the Facility discharged to its wastewater treatment plant through stormwater drainage control directed into a complex consisting of an open, below-grade sump, collection basin and pump systems.

14. Upon the effective date of this CA/FO, Respondent shall institute, to the extent not already done, and shall thereafter maintain practices and procedures, including but not necessarily limited to purchasing and maintaining equipment therefore, that eliminate or significantly reduce to the fullest extent possible the off-site release (*i.e.* from the Facility to land and water outside the boundaries of the Facility) of lead and/or dust containing other RCRA constituents generated or otherwise spread in the course of the following activities, processes and operations occurring at the Facility:

a) the movement of vehicles such as trucks and automobiles to and from the Facility (including truck wash station(s)): Measures to be taken in connection herewith shall include washing each vehicle on the Facility grounds (except those vehicles that have accessed only the employee and/or visitor parking areas) as it approaches any exit to the Facility; further, in connection herewith:

i) Such washing shall at a minimum include the washing of tires, the undercarriage of the vehicle(s) and the exterior surface of any such vehicle(s);

ii) Following such washing but prior to the vehicle(s) exiting the Facility, Respondent shall, through properly trained personnel, inspect any such vehicle(s) to ensure there are no visible signs of contamination by lead and/or dust containing other RCRA constituents, and, where there are visible signs of such contamination, Respondent shall re-wash any such vehicle(s) to ensure that there are no visible signs of such contamination; and

iii) Respondent shall collect all water used in the aforementioned washing(s) of any vehicle as it approaches an exit to the Facility; and send same to the Facility's wastewater treatment plant.

b) the movement of vehicles such as trucks and automobiles within the Facility: Measures to be taken in connection herewith shall include paving all areas of the Facility subject to vehicle traffic (*e.g.*, trucks, automobiles), but Respondent need not do so for limited access and limited use roadways, such as unpaved roads to remote locations on the property of the Facility, that are used for no more than one round trip per day. Respondent shall clean the pavement at least two times a day, except

Respondent need not clean the pavement at least two times a day when natural precipitation makes cleaning unnecessary; and

c) the dissemination or transfer of lead and/or dust containing other RCRA constituents by employees in the course of such practices as changing clothing and footwear, removing personal protective equipment, washing and associated activities following the completion of employees' work shifts: Measures to be taken in connection herewith shall include a clear delineation of clean areas (*i.e.* areas of minimal lead dust contamination) of the Facility from dirty areas (*i.e.* areas of likely lead dust contamination), and such measures shall include Respondent providing, maintaining and ensuring the use of separate clean side and dirty side employee locker rooms separated by a sufficient number of showering facilities for employee use following completion of a work shift.

15. Respondent shall immediately institute, to the extent not already done, and shall thereafter maintain practices and procedures that result in Respondent eliminating or minimizing to the fullest extent possible off-site releases of lead-contaminated stormwater and wastewater, including but not necessarily limited to off-site releases of such lead-contaminated water resulting from overflows at sumps, collection basins and the pump system.

16. Respondent shall immediately institute, to the extent not already done, and shall thereafter maintain practices and procedures that result in Respondent eliminating all mixing operations of baghouse dust with wet lead oxide and damp lead oxide except when such mixing occurs for charge preparations.

17. Upon the effective date of this CA/FO, Respondent shall institute, to the extent not already done, and shall thereafter maintain practices and procedures that ensure that, except as noted below, all lead acid batteries received for reclamation are processed within 24 hours of receipt.³

a) Receipt of batteries shall, for purposes of this CA/FO, commence upon the unpacking or off-loading of the batteries from the transporting vehicle or trailer. Batteries remaining within a transporting vehicle or trailer must remain labeled and within containers packed in accordance with applicable Department of Transportation regulations, provided, however, that such pre-receipt, temporary storage shall not exceed 10 days without Respondent meeting the applicable requirements of 40 C.F.R. Parts 264, 266 and 270;

b) Respondent may request an extension of time to allow temporary storage of received batteries if such extension is necessary because of temporary, and either unforeseen or uncontrollable, circumstances. To request such an extension or for any other unforeseen circumstances that might arise, Respondent shall contact EPA's Project Manager (identified below). With regard to a request for an extension, EPA may grant same in the exercise of its discretion. Where Respondent receives such an extension, Respondent shall inspect battery storage areas at least two times each week. After an extension

³ Limited amounts of industrial lead acid batteries, consisting of steel battery cases with individual lead acid battery cells, may be staged in the process area awaiting removal of lead acid cells for further processing. Such limited, staged industrial lead acid batteries will be considered "in process" rather than "stored."

terminates, unless an additional one has been granted in accordance herewith, Respondent shall comply with the applicable requirements of 40 C.F.R. Part 264 if the storage of the received batteries continues; further, upon discovering any broken or damaged batteries, Respondent shall immediately move such batteries to be processed and Respondent shall immediately clean residue from such broken or damaged batteries; and

c) Notwithstanding any provision in this paragraph, no such temporary storage as permitted in accordance with this paragraph shall occur unless the batteries are stored within containers that comply with the requirements of 40 C.F.R. Part 264, Subpart I; within tanks that comply with the requirements of 40 C.F.R. Part 264, Subpart J; within containment buildings that comply with the requirements of 40 C.F.R. Part 264, Subpart DD; or within indoor waste piles that comply with the requirements of 40 C.F.R. § 264.250(c).

18. Upon the effective date of this CA/FO, Respondent shall implement, to the extent not already done, and shall thereafter maintain Facility-wide programs for the following purposes:

a) to clean to the extent reasonably possible areas of the Facility that have been or are being exposed to lead and/or dust containing other RCRA constituents;

b) to institute a dust monitoring, cleaning and maintenance program to ensure that all areas of the Facility (other than those areas in which the processing of lead-containing materials occurs) remain clean to the extent reasonably possible of lead and/or dust containing other RCRA constituents; and

c) to ensure employee health and safety protection.

19. Respondent shall submit to EPA within 10 days of the effective date of this CA/FO: a) documentation attesting to Respondent's compliance with the requirements of paragraphs 8, 9, 10, 11, 12, 13, 14, 15, 16 and 17 of this section, above, and b) a "standard operating procedure" manual (hereinafter "SOP manual") that will set forth in complete, precise and specific detail the measures and means by which Respondent intends successfully to permanently implement the requirements set forth in paragraphs 12, 13, 14, 15, 16, 17 and 18 of this section, above (and which manual shall incorporate the provisions set forth in the Baseline Elements document attached to this CA/FO as Appendix 1, and any other information or guidance necessary for the SOP manual to effect the purposes, as herein stated, for such manual), and to attain, within 90 days of its aforementioned submission, the objectives set forth in said paragraphs. The SOP manual shall include a timetable for implementation of its provisions. Once submitted to EPA, the SOP manual shall be subject to EPA review and approval, including the timetable of implementation. EPA approval, however, shall not be unreasonably withheld.

20. In developing the SOP, Respondent may consult with EPA. If, after EPA review and/or consultation, EPA deems any measure or means proposed in the SOP manual inadequate, insufficient or incomplete to attain requisite compliance with applicable RCRA requirements and prohibitions, Respondent shall include in the SOP manual such additional reasonable measures and means as EPA

directs it to include, including any timetable or schedule for compliance or implementation.

21. The SOP manual shall include a listing of those measures and means (*e.g.*, change in Facility processes or procedures, purchase of new equipment, replacing old equipment, training programs, inspection schedules) by which EPA (or a designated third-party) will be able to verify Respondent's good faith efforts to implement the provisions described above in paragraph 19 of this section and to attain compliance with applicable RCRA requirements and prohibitions in Respondent's operation of the Facility.

22. At a minimum, the SOP manual shall, establish a level of protection as set forth in the Baseline Elements document. The SOP manual shall be prepared by suitable and competent professionals, including a certified industrial hygienist with relevant experience in the operation and maintenance of secondary lead smelters, and a responsible official of Respondent shall certify Respondent's intent to carry out the provisions thereof.

23. Once approved by EPA, the SOP manual shall be incorporated by reference into this CA/FO. A violation of a provision of the SOP manual shall be deemed a violation of this CA/FO, and any relief or remedy available to EPA (or the United States on behalf of EPA) under applicable law for a violation(s) of this CA/FO shall be available to EPA (or the United States on behalf of EPA) for any violation(s) of the SOP manual.

24. Nothing herein is intended or is to be construed as precluding Respondent from undertaking any additional measures and means it deems appropriate to minimize the possibility of a fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil or surface water that could threaten human health or the environment or otherwise to attain compliance with applicable RCRA requirements and prohibitions in the operation of the Facility, provided, however, that any such additional measures or means do not result in Respondent's efforts to attain compliance with said RCRA requirements and prohibitions falling below the level mandated by the approved SOP manual and paragraphs 12, 13, 14, 15, 16, 17 and 18 of this section, above.

25. After incorporation of the SOP manual into this CA/FO, it may be amended or modified if both parties agree in writing to do so, and such writing shall specify with particularity the provisions of the SOP manual to be amended or modified. As so amended or modified, the SOP manual will continue to be incorporated as part of this CA/FO, and the provisions of paragraph 23 of this section, above, regarding a violation of the SOP manual shall apply to the amended or modified SOP manual.

26. Notwithstanding any other provision herein, within four hundred twenty-five (425) days of the effective date of this CA/FO, Respondent shall have completed (or have a third-party complete on its behalf) the total enclosure at the Facility for: a) the structure(s) containing the processes and/or sources identified in paragraph 1 of the attached Baseline Elements document (hereinafter in this paragraph and the following paragraph referred to as the "main production area"), and b) the baghouse. To meet the deadline set forth herein, Respondent shall take the interim measures set forth below in accordance with the following schedule:

- a) Award equipment purchase orders within 90 days of the effective date;

- b) Secure the design plans (vendor drawings) and ensure same are in place within 120 days of the effective date;
- c) Begin the “mobilization” and construction work on said total enclosures within 180 days of the effective date;
- d) Complete the Baghouse (including duct work and control system) fabrication and installation within 345 days of the effective date;
- e) Commissioning of the Baghouse and startup within 365 days of the effective date; and
- f) Complete the total enclosure of the main production area within 425 days of the effective date.

27. Within 30 days after total enclosure has been completed in accordance with the previous paragraph, and also within 30 days after each of the interim steps identified in the previous paragraph has been effected, Respondent shall, in writing, certify to EPA that it successfully implemented the designated event, and such submission(s) shall include appropriate and relevant documentation attesting to the truth and accuracy of the certification. Such certification shall be made by a responsible corporate official of Respondent.

28. For failure to comply with the requirements set forth in paragraphs 19 through 22 of this section, above, or the requirements set forth in paragraph 26, of this section, above,⁴ Respondent shall pay stipulated penalties that shall accrue per violation per day for each violation:

<u>Penalty per Violation per Day</u>	<u>Period of Noncompliance</u>
\$100	1 st through 30 th day
\$500	31 st through 60 th day
\$1000	61 st through 90 th day
\$3,000	Every day thereafter

29. Stipulated penalties above shall begin to accrue on the day when, pursuant to this CA/FO, a designated event(s) is scheduled to have been completed but has not been completed, and shall continue to accrue until performance is satisfactorily completed. Stipulated penalties shall accrue simultaneously for separate violations of the requirements set forth in paragraphs 19 through 22 of this section, above

⁴ References in this paragraph, as well as in paragraphs 29, 31 and 33 of this section, below, to “paragraph 19” do not include that portion of paragraph 19 pertaining to “documentation attesting to Respondent’s compliance with the requirements of paragraphs 8, 9, 10, 11, 12, 13, 14, 15, 16 and 17 of this section, above.”

and/or the requirements set forth in paragraph 26, of this section, above. Unless Respondent provides EPA with a writing pursuant to the paragraph below, all stipulated penalties shall be due and payable within 30 days of Respondent's receipt from EPA of a written demand for payment of the penalties. The method of payment shall be in accordance with the provisions of paragraph "1" of this section, above. Interest and a late payment handling charge will be assessed in the same manner and in the same amounts as specified in paragraph "5" of this section, above. Penalties shall accrue as provided above without regard to whether EPA has notified Respondent of the violation or made a demand for payment.

30. After receipt from EPA of a demand for payment of stipulated penalties pursuant to paragraph "29" of this section, above, Respondent shall have 20 days in which to provide Complainant with a written explanation of why it believes that a stipulated penalty is not due and owing or appropriate for the cited violation(s) of this Consent Agreement (including any technical, financial or other information that Respondent deems relevant).

31. EPA may, in the exercise of its sole discretion, reduce or waive any stipulated penalty due if Respondent has in writing demonstrated to EPA's satisfaction good cause for its failure to comply with any of the requirements set forth in paragraphs 19 through 22 of this section, above and/or with any of the requirements of paragraph 26 of this section, above. If, after review of Respondent's submission pursuant to the preceding paragraph, EPA denies same, EPA will notify Respondent in writing of its determination that Respondent has failed to comply with any of the requirements set forth in paragraphs 19 through 22 of this section, above and/or with any of the requirements of paragraph 26 of this section, above, and said notification will inform Respondent that it shall pay either the full amount of the stipulated penalty(ies) or a reduced amount of the stipulated penalty(ies). Respondent shall pay the stipulated penalty(ies) amount indicated in EPA's notice within 30 days of receipt.

32. Failure of Respondent to pay any stipulated penalty demanded by EPA pursuant to this CA/FO may result in referral of this matter to the United States Department of Justice or the United States Department of the Treasury for collection.

33. The stipulated penalty(ies) provided in this CA/FO for any failure(s) by Respondent to comply with the requirements set forth in paragraphs 19 through 22 of this section, above, and/or with any of the requirements of paragraph 26 of this section, above, shall be in addition to any other rights, remedies or sanctions available to EPA (or the United States on behalf of EPA) provided for by applicable law. Nothing herein is intended or is to be construed as waiving, pre-empting or otherwise affecting the availability of any such right, remedy or sanction for any such violation(s) under applicable law.

34. Notwithstanding any provision above, nothing herein is intended or is to be construed as exempting Respondent from fully complying with applicable RCRA requirements or prohibitions in Respondent's operation of the Facility, nor is anything herein intended or to be construed as immunizing Respondent from legal liability for any violation(s) of any applicable law.

35. Following EPA's approval of the SOP manual, for a period of three years, Respondent shall continue to provide quarterly written reports (or through other means agreeable to EPA) to EPA on its ongoing efforts, as well as the successes and failure of, its efforts to minimize the possibility of fire,

explosion, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents. After one year, Respondent may request EPA to modify the reporting schedule, and any decision to do so shall be made at the discretion of EPA. To the extent EPA deems such efforts unsatisfactory, EPA shall communicate in writing its concerns and identify problems with such efforts, and the parties shall from time to time consult on Respondent's efforts to ensure that Respondent successfully has minimized the possibility of fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents. If, after such consultation, EPA deems Respondent has failed to attain ongoing compliance with applicable RCRA requirements and prohibitions for the operation of the Facility, Respondent shall further carry out those reasonable measures and activities as it is directed to implement by EPA and in accordance with the schedule EPA has established after consultation with Respondent, in order to attain such compliance.

36. The aforementioned reports set forth in paragraph 35, above, shall also include, if changes are made in the process(es) conducted at the Facility or if there are changes in the nature of the waste(s) generated by the Facility, documentation attesting to the hazardous waste determinations conducted pursuant to paragraph 8 of this section, above, and such reports shall detail the method relied upon.

37. Respondent shall not store or accumulate hazardous waste at the Facility for more than 90 days, and, to the extent Respondent stores hazardous waste at the Facility for under 90 days, it shall comply with the provisions specified in 40 C.F.R. § 262.34(a), including, but not limited to, the following:

- a) sub-paragraph (a)(1), specifying where such waste is to be placed and the provisions of 40 C.F.R. Part 265 with which Respondent shall comply;
- b) sub-paragraph (a)(2), requiring that the date upon which each period of storage or accumulation of the hazardous waste begins is clearly marked and visible for inspection; and
- c) sub-paragraph (a)(3), requiring that, while such hazardous waste is stored or accumulated on-site, each container and/or tank holding such waste be labeled or marked clearly with the words, "Hazardous Waste" and other words identifying the contents.

38. To the extent Respondent treats hazardous waste in its wastewater treatment plant at the Facility, such treatment shall be consistent with any applicable requirements of RCRA and the Federal Water Pollution Control Act, as amended, 33 U.S.C. § 1251 *et seq.* (hereinafter referred to as the "Clean Water Act"), including:

- a) Section 3005 of RCRA, 42 U.S.C. § 6925, and the applicable regulations EPA has promulgated under the authority of Subchapter III of RCRA, 42 U.S.C. §§ 6921 - 6939e, including Subpart J of 40 C.F.R. Part 264; and
- b) Section 402 or 307(b) of the Clean Water Act, 33 U.S.C. §§ 1342 or 1317(b), respectively, including any applicable regulations EPA has promulgated pursuant to such authority.

39. Respondent shall file any required application to comply with paragraph 38 of this section, above, within 30 days of the effective date of this CA/FO. Within 30 days of having done so, Respondent shall in writing certify to EPA that it has filed such application, specifying to whom/to which entity it has made such application and when such application has been made, and such submission shall contain a copy of such application (in whole, or in relevant part). Such certification shall be made by a responsible corporate official of Respondent.

40. Except as may otherwise be specifically provided in 40 C.F.R. Part 266, Subpart G, for any hazardous waste (including but not limited to wastewater treatment sludge that would be classified pursuant to RCRA as either a listed hazardous waste or a characteristic hazardous waste) stored or accumulated at the Facility as of the effective date of this CA/FO, Respondent shall send such waste off-site for treatment or disposal in accordance with applicable RCRA requirements by no later than 90 days after such date. Subsequent thereto, Respondent shall not store hazardous waste on-site for more than 90 days.

41. For failure to comply with the application requirement set forth in paragraph 39 of this section, above, and/or the requirements set forth in paragraph 40 of this section, above, Respondent shall pay stipulated penalties that shall accrue per violation per day for each violation:

<u>Penalty per Violation per Day</u>	<u>Period of Noncompliance</u>
\$100	1 st through 30 th day
\$500	31 st through 60 th day
\$1000	61 st through 90 th day
\$3,000	Every day thereafter

42. The procedural provisions regarding the assessment of stipulated penalties as set forth in paragraphs 29 through 32, and the provisions of paragraph 33 of this section, above, are hereby incorporated by reference into this paragraph with the same force and effect as if fully set forth, and said provisions shall apply to any violation(s) by Respondent of the requirements set forth in paragraphs 39 and 40 of this section, above.

43. Upon the effective date of this CA/FO Respondent shall institute (to the extent not already done) and shall thereafter maintain a Facility-wide training program that meets the standards and objectives of 40 C.F.R. § 264.16 for workers employed at the Facility as of the effective date of this CA/FO. With regard to employees hired after the effective date of this CA/FO, Respondent shall institute and continue personnel training as required by 40 C.F.R. § 264.16(a), *i.e.* personnel at the Facility responsible for hazardous waste management must be given and must successfully complete within six months of employment at the Facility classroom instruction or on-the-job training to ensure the Facility's compliance with hazardous waste management regulations, and such training shall include not only hazardous waste management procedures but should also ensure that Facility personnel are able effectively to respond to hazardous waste emergencies.

44. Respondent shall, in compliance with 40 C.F.R. § 264.16(c), ensure that facility personnel participate in an annual review of the training mandated by 40 C.F.R. § 264.16(a).

45. As part of Respondent's obligation to comply with 40 C.F.R. § 264.16, Respondent shall institute and from time to time, as necessary, update a program for the education and training of all Facility personnel to perform their duties in such a way that ensures they are doing so in a manner that protects employee health and safety, complies with all applicable hazardous waste regulation and eliminates or significantly reduces to the fullest extent possible the off-site release (*i.e.* from the Facility to land and water outside its boundaries) of lead and/or dust containing other RCRA constituents.

46. To the extent applicable, Respondent shall amend any contingency plan it has for the Facility to incorporate provisions addressing the requirements of 40 C.F.R. §§ 264.51, 264.52 and 264.53, including but not necessarily limited to incorporating hazardous waste management provisions to ensure Facility compliance with the requirements of 40 C.F.R. Part 264 and listing the home addresses of each designated emergency coordinator.

47. To the extent not already set forth herein and not inconsistent with any prior provision herein, Respondent shall implement any reasonable additional measures and activities EPA determines, after consultation with Respondent, to be necessary for the Facility to attain and maintain compliance with applicable RCRA requirements and prohibitions.

48. As part of the settlement of this matter, Respondent agrees to, and shall accordance with the terms and conditions of this CA/FO, implement three separate Supplemental Environmental Projects (SEPs) in accordance with the "EPA Supplemental Environmental Projects Policy" ("SEP Policy"), which became effective May 1, 1998. These SEPs, to be more fully described below, are the "Plant Roadways Vacuum Sweeper Vehicle Project" (hereinafter the "Vacuum Sweeper SEP"), the "Pelletizer Units Project" (hereinafter the "Pelletizer SEP") and the "High School Outreach Project" (hereinafter the "Outreach SEP").

The Plant Roadways Vacuum Sweeper Vehicle SEP

49. Respondent agrees to, and shall accordance with the terms and conditions of this CA/FO, implement and perform a SEP that consists of the identification, acquisition, operation, and maintenance of a Vacuum Sweeper Vehicle to clean Facility roadways of lead and/or dust containing other RCRA constituents for a minimum of three years. To implement this SEP, Respondent shall expend at least ONE HUNDRED EIGHTY THOUSAND (\$180,000.00) DOLLARS. Respondent shall purchase the Vacuum Sweeper Vehicle, and have same on the premises of the Facility, within 90 days of the effective date of this CA/FO.

50. The Vacuum Sweeper Vehicle purchased by Respondent must be designed, constructed, operated, and maintained to comply, at a minimum, with the following requirements:

- a) If the vacuum sweeper vehicle uses water flushing followed by sweeping, the water flush must employ a minimum application of 0.48 gallons of water per square yard of

pavement cleaned; or

b) The vacuum sweeper vehicle must be equipped with a filter rated to attain a capture efficiency of 99.97 for 0.3 micron particles.

51. After 12 months but within 15 months of operation of the Vacuum Sweeper Vehicle, Respondent shall submit to EPA a SEP Operational Report which shall:

- a) Review and detail all actions taken to implement the Vacuum Sweeper SEP;
- b) Review and detail the effectiveness of and Respondent's operational experience with the Vacuum Sweeper Vehicle sufficient to inform EPA how the equipment is being used and how well it is achieving the objectives for which it has been obtained;
- c) Summarize all periods when the Vacuum Sweeper Vehicle was not in use, the reasons for such disuse (*e.g.*, mechanical failure, routine maintenance) and Respondent's efforts to remedy this/these situation(s);
- d) Detail all SEP-related expenditures, which shall include an acquisition cost report certified as accurate under penalty of perjury by a responsible corporate official that the sum of at least \$180,000 was spent by the Respondent in the purchase of the Vacuum Sweeper Vehicle (except to the extent a lesser expenditure has been approved by EPA pursuant to the provisions of this CA/FO); and
- e) Provide documentation attesting to the costs and expenditures Respondent has incurred in its implementation of the Vacuum Sweeper SEP.

52. Following receipt of the SEP Operational Report described in the paragraph above, EPA will either (a) accept the SEP Operational Report or (b) reject the SEP Operational Report, notify the Respondent, in writing, of questions EPA has and/or deficiencies therein and grant Respondent an additional short period of time, which shall be reasonable under the then-existing circumstances (15 days at a minimum), in which to answer EPA's inquiries and/or to correct any deficiencies in the SEP Operational Report.

53. After 36 months (3 years) but within 39 months (3 years, 3 months) of operation of the Vacuum Sweeper Vehicle, Respondent shall submit to EPA a Final SEP Operational Report which shall:

- a) Review and detail all actions taken to implement the Vacuum Sweeper SEP;
- b) Review and detail the effectiveness of and Respondent's operational experience with the Vacuum Sweeper Vehicle sufficient to inform EPA about Respondent's experience with the equipment and how well it is achieving the objectives for which it has been obtained;

c) Summarize all periods when the Vacuum Sweeper Vehicle was not in use, the reasons for such disuse (*e.g.*, mechanical failure, routine maintenance) and Respondent's efforts to remedy this/these situation(s); and

d) Detail all additional Vacuum Sweeper SEP-related expenditures; and

e) Provide documentation attesting to all additional Vacuum Sweeper SEP-related expenditures.

54. Following receipt of the Final SEP Operational Report described in the paragraph above, EPA will either (i) accept the Final SEP Operational Report and issue a Notice of Accomplishment, or (ii) reject the Final SEP Operational Report, notify the Respondent, in writing, of questions EPA has and/or deficiencies therein and grant Respondent an additional short period of time, which shall be reasonable under the then-existing circumstances (15 days at a minimum), in which to respond to EPA's inquiries and/or to correct any deficiencies in the Final SEP Operational Report.

The Pelletizer Units SEP

55. Respondent agrees to implement and perform a SEP that consists of the identification, design, acquisition, installation, operation, and maintenance of Pelletizer Units at each of the dust collector storage bins for the purpose of minimizing dust generation and potential releases during fine baghouse dust handling and reclamation procedures at the Facility. These units, or successor units, shall be operated and maintained for the life of the Facility's baghouse dust collection activities. To implement this SEP, Respondent shall expend at least ONE HUNDRED FIFTY THOUSAND (\$150,000.00) DOLLARS. Respondent shall purchase, install and have operational the Pelletizer Units within 90 days of the effective date of this CA/FO.

56. The Pelletizer Units shall form the mass of fine dust particles into a pellet, ball or granule in the presence of moisture added during the pelletizing process. If required for increased product hardness or process considerations, a solid or liquid binder will be added before or during pelletizing. As dust particles are moistened and pellets formed in the pelletizing apparatus, pellets of the proper size and shape will be discharged into a container to be transported to the Facility's production area.

57. The Pelletizer Units shall be designed and operated to minimize the release of fine material from the agglomerated pellet (*i.e.* dust formation). The SOP manual shall be supplemented with a section that sets forth in complete, precise and specific detail the measures and means by which Respondent intends to ensure successful operation of the Pelletizer Units and minimize dust formation. At a minimum, the SOP supplement shall incorporate, and the Pelletizer Units must be operated and maintained according to, the manufacturer's specifications. The supplement to the SOP must include regular testing of pellet formation and subsequent system modification as needed, to meet the goal of minimizing dust formation. Regular testing must include an attrition loss test. Unless an alternative test and standard are deemed by EPA to be agreeable, the testing of pelletizer units and the performance standard for the units shall consist of the following:

a) Samples: A minimum of one series of at least 10 pellets shall be run from each Pelletizer

Unit, and pellets shall be randomly selected and be representative of the individual Pelletizer Unit's output;

b) Compression/ crush test: (i) The compressive strength will be determined by placing a single pellet (individually) between two steel plates and evenly applying pressure until fracture occurs. The value is measured in pounds of pressure applied; and (ii) the standard shall be 90% of tested pellets exceeding 10.0 pounds of compression without fracture;

c) Impact or drop test: (i) The impact strength of a pellet shall be determined by repeated dropping of a pellet onto an iron surface from a height of 18 inches until the pellet fractures or chips, with the impact resistance being measured by the number of drops the pellet survived; and (ii) the standard shall be 90% of tested pellets exceeding 10 drops before fractures or chips; and

d) Attrition loss test: (i) The attrition test is determined by placing 10 pellets (one series) on a 20-mesh sieve and vibrating with a common sieve shaker for five minutes, with the amount of material passing the 20-mesh screen measured as the attrition loss percentage, by weight; and (ii) the standard shall be less than 5% attrition loss, by weight.

58. After 12 months but within 15 months of the start of operation of the Pelletizer Units, Respondent shall submit to EPA a SEP Operational Report which shall include:

a) Review and detail all actions taken to implement the Pelletizer SEP;

b) Review and detail effectiveness of and Respondent's operational experience with the Pelletizer Units sufficient to inform EPA about Respondent's experience with the equipment and how well they are achieving the objectives for which they were obtained;

c) Summarize all periods when the Pelletizer Units were not in use, the reasons for such disuse (*e.g.*, mechanical failure, routine maintenance) and Respondent's efforts to remedy this/these situation(s);

d) Detail all SEP-related expenditures. This must include an acquisition cost report certified as accurate under penalty of perjury by a responsible corporate official that the sum of at least \$150,000 was spent by Respondent in the purchase and installation of the Pelletizer Units (except to the extent a lesser expenditure has been approved by EPA pursuant to the provisions of this CA/FO); and

e) Provide documentation attesting to the costs and expenditures Respondent has incurred in its implementation of the Pelletizer SEP.

59. Following receipt of the SEP Operational Report described in the paragraph above, EPA will either (i) accept the SEP Operational Report or (ii) reject the SEP Operational Report, notify the Respondent, in writing, of questions EPA has and/or deficiencies therein and grant Respondent an additional short period of time, which shall be reasonable under the then-existing circumstances (15 days at a minimum), in which to respond to EPA's inquiries and/or to correct any deficiencies in the

SEP Operational Report.

60. After 36 months (3 years) but within 39 months (3 years, 3 months) of commencement of the operation of the Pelletizer Units, Respondent shall submit to EPA a Final SEP Operational Report which shall:

- a) Review and detail all actions taken to implement the Pelletizer SEP;
- b) Review and detail the effectiveness of and Respondent's operational experience with the Pelletizer Units sufficient to inform EPA about Respondent's experience with the equipment and how well they are achieving the objectives for which they were obtained;
- c) Summarize all periods when the Pelletizer Units were not in use, the reasons for such disuse (e.g., mechanical failure, routine maintenance) and Respondent's efforts to remedy this/these situation(s); and
- d) Detail all additional Pelletizer SEP-related expenditures; and
- e) Provide documentation attesting to all additional Pelletizer SEP-related expenditures.

61. Following receipt of the Final SEP Operational Report described in the paragraph above, EPA will either (i) accept the Final SEP Operational Report or (ii) reject the Final SEP Operational Report, notify the Respondent, in writing, of questions EPA has and/or deficiencies therein and grant Respondent an additional short period of time, which shall be reasonable under the then-existing circumstances (at a minimum 15 days), in which to respond to EPA's inquiries and/or to correct any deficiencies in the Final SEP Operational Report.

The Outreach SEP

62. Respondent agrees to implement and perform a multi-component SEP that consists of providing assistance to local high schools in Puerto Rico and their governing districts through a series of assessments, reports, mentoring and outreach training seminars designed to improve environmental regulatory compliance and to reduce risks associated with chemical storage and usage and other facility practices that could impact children's health. To implement this SEP, Respondent shall expend at least ONE HUNDRED FIFTY THOUSAND (\$150,000) DOLLARS.

63. Respondent shall arrange for and contract with certified expert trainers, consultants, and/or academics in environmental safety, industrial hygiene, or other recognized, appropriate fields (the "Outreach and Assessment Team") within 90 days of the effective date of this CA/FO. Unless otherwise approved by EPA, the selected Outreach and Assessment Team must be a Puerto-Rico university-based party, have a known expertise in environmental outreach, compliance training and legacy chemical identification and removal in the K-12 sector, and the selection must be approved by EPA.

64. Respondent shall ensure that the Outreach and Assessment Team will conduct assessments of

high school facilities with school district officials to assist school district officials in: a) determining which Commonwealth and federal regulatory requirements apply and b) developing waste disposal, pollution prevention, waste minimization, and product substitution plans based, at least in part, on the regulatory and best management practices detailed in the following:

a) *Environmental Compliance and Best Management Practices: Guidance Manual for K-12 Schools*;

b) *Environmental Health & Safety in the Arts: A Guide for K-12 Schools, Colleges and Artisans* (“Guidance Manuals”); and

c) Other material, including presentations, to be provided by EPA (the items identified in subparagraphs “a,” “b” and “c” of this paragraph shall hereinafter be collectively referred to as “Guidance Material”).

65. Respondent shall ensure that, as part of the assessments process identified in paragraph 64 of this section, above, the Outreach and Assessment Team provides to each school administrator a report detailing regulatory compliance issues and provides a tailored plan covering suggested compliance fixes, which may include recommendations concerning chemical usages and inventories and a pollution prevention/waste minimization chemical management plan tailored to the assessed facility. The Outreach and Assessment Team will offer training for school and district staff on applicable Commonwealth and federal environmental regulatory requirements and on means of implementing waste disposal, pollution prevention, waste minimization, and product substitution plans.

66. Respondent shall also ensure that the Outreach and Assessment Team will offer assessed facilities assistance in a mentoring role with development of a surplus/legacy waste chemical action and disposal plan. Where the Outreach and Assessment Team has formed the opinion that a risk to the safety of the students and others may be presented by conditions at an assessed school, the Outreach and Assessment Team shall immediately report conditions to school administrators and to EPA and make available to them, at Respondent’s expense, the Outreach and Assessment Team’s expertise for technical training, and assistance. The Outreach and Assessment Team will also take such action to notify local authorities and EPA (whether required by law or otherwise) if the serious safety risk is not timely and appropriately addressed by the school administrators. The Outreach and Assessment Team may assume responsibility for a one-time clean out and disposal of high risk waste chemicals that are discovered at public high schools. Having determined that a one-time cleanup is necessary, the Outreach and Assessment Team will immediately then also notify EPA of the nature of that risk. The Outreach and Assessment Team shall have no other or further responsibility for addressing the safety risk and is under no obligation to actually assume responsibility for one-time clean outs. If the Outreach and Assessment Team or its representatives undertake a one-time clean out, management and disposal expenditures associated with the clean out may, upon approval by EPA, be credited toward the required minimum expenditure for the Outreach SEP.

67. At least 90 days prior to the date of the first outreach and assessment effort, Respondent shall provide to EPA a work plan in English detailing project scope, implementation plan, participants, and outline of the presentation and a copy of any planned audiovisual materials or handouts. EPA shall have

the right to provide feedback and input on the work plan. Once EPA has given Respondent feedback (or otherwise informs it that it has no feedback), Respondent shall instruct the Outreach and Assessment Team to initiate the High School Outreach and Assessment Project.

68. Within 30 days after the final high school outreach and assessment effort, Respondent shall provide EPA with a copy of all materials (including the electronic version, where feasible), such as handouts, visual aids, power point presentations, and agenda (talking points) that Respondent through Outreach and Assessment Team has distributed or otherwise used in said presentations. Such materials shall be provided to EPA in Spanish.

69. Within 90 days after completion of all final high school outreach and assessment efforts, Respondent shall submit to EPA a completion report in English detailing the following: (a) the actions taken to implement the High School Outreach and Assessment Project, including the expenditures Respondent has made (and include therewith copies of invoices, purchase orders and other documentation to demonstrate such expenditures or obligations incurred), (b) the experiences of Respondent and the Outreach and Assessment Team in organizing and implementing the Outreach SEP, (c) any problems encountered in organizing and implementing the Outreach SEP (and concomitantly, how such problems were resolved), (d) the dates and locations of the outreach and assessments, (e) the feedback Respondent and the Outreach and Assessment Team received from the assessed schools, and (f) any other information Respondent and the Outreach and Assessment Team deem relevant to a report on the Outreach SEP. This report shall also contain any suggestions as to future compliance assistance and outreach activities. This report shall be certified by an appropriate official of both the Respondent and the Outreach and Assessment Team and shall evidence completion of the High School Outreach and Assessment Project and document all expenditures related thereto.

70. Following receipt of the completion report described in the paragraph above, EPA will either (i) accept the completion report and issue a Notice of Completion, or (ii) reject the completion report, notify the Respondent, in writing, of questions EPA has and/or deficiencies therein and grant Respondent an additional short period of time, which shall be reasonable under the then-existing circumstances (15 days at a minimum), in which to respond to EPA's inquiries and/or to correct any deficiencies in the completion report.

71. Any public statement, oral or written, made by Respondent with regard to the development of the training, assessment and outreach component, including any made at, during and/or in a compliance assistance presentation, meeting, lecture, seminar, mailing or other outreach effort, shall include the following language, in both Spanish and English: "This compliance assistance project was undertaken in connection with a Consent Agreement and Final Order entered into between the United States Environmental Protection Agency and The Battery Recycling Company."

Provisions Applicable To All Three SEPs

72. Whether Respondent has complied with the terms of this CA/FO with regard to the successful and satisfactory implementation and/or operation of any of the three SEPs as herein required, including whether Respondent has made good faith and timely efforts to effect same, and whether costs expended are creditable to each of the SEP as herein required shall be solely determined by EPA.

Should EPA have any concerns about the satisfactory completion of any of the SEPs, EPA will communicate those concerns in writing to Respondent and provide it with an opportunity to respond, and/or correct any of the deficiency(ies). If EPA makes a determination that an SEP(s) has been satisfactorily completed, it will provide Respondent with written confirmation of the determination within a reasonable amount of time.

73. Respondent agrees that EPA (including authorized representatives of EPA) may inspect the Facility during reasonable business hours in order to confirm that the SEPs (either individually or collectively) are being implemented properly and in conformity with the terms and conditions set forth in this CA/FO, provided, however, this paragraph is not intended or is to be construed to deny, limit or waive any right of EPA pursuant to applicable law, including the provisions of RCRA, to conduct an inspection of the Facility for any purpose prescribed by any applicable law.

74. Respondent shall maintain in one central location legible copies of documentation concerning the development, implementation and financing of the SEPs, and documentation supporting information in the reports required to be submitted to EPA pursuant to this CA/FO. Respondent shall grant EPA (including authorized representatives of EPA) access to such documentation and shall provide copies of such documentation to EPA within 20 days of Respondent's receipt of a request by EPA for such information or within such additional time as approved by EPA, in writing. The provisions of this paragraph shall remain in effect for five years from the effective date of this CA/FO, or two years after the completion of the SEPs, whichever date is later.

75. Each of the SEPs to be implemented by Respondent pursuant to this CA/FO has been accepted by EPA solely for purposes of settlement of this administrative proceeding. Nothing in this CA/FO is intended or is to be construed as a ruling on or determination of any issue related to any federal, Commonwealth of Puerto Rico or local permit.

76. Respondent hereby certifies that, as of the date of its authorized signature on this Consent Agreement, it is not required to implement or complete any of the aforementioned SEPs pursuant to any federal, Commonwealth of Puerto Rico or local law, or other requirement including federal or Commonwealth of Puerto Rico rules. Respondent further certifies that, with the exception of this Consent Agreement, Respondent is not required to implement or complete any of the SEPs set forth in this Consent Agreement by any agreement, grant, or as injunctive relief in this or any other suit, action or proceeding in any jurisdiction, and that Respondent had not instituted before December 1, 2011 any of the work that is part of these SEPs.

77. Respondent certifies that it has not received, and is not presently negotiating to receive, credit in any other enforcement action for any of the aforementioned SEPs (with the exception of a SEP comparable to the Outreach SEP in a proceeding involving alleged violations of Section 313 of the Emergency Planning and Community Right to Know Act, 42 U.S.C. § 11023) and that Respondent in good faith believes that the SEPs are in accordance with the provisions of EPA's 1998 Final Supplemental Environmental Projects policy set forth at 63 *Federal Register* 24796 (May 5, 1998).

78. Respondent certifies that it is not a party to any open federal financial assistance transaction that is funding or could be used to fund the same activity as any of the SEPs. Respondent further

certifies, to the best of its knowledge and belief after reasonable and diligent inquiry, there is no such open federal financial transaction that constitutes funding or could be used to fund the same activity as any of the SEPs, nor has the same activity as any of the SEPs been described in an unsuccessful federal financial assistance transaction submitted to EPA within two years of the date of the execution of this settlement (unless the project(s) was barred from funding as statutorily ineligible). For the purpose of the certifications to be made pursuant to this paragraph, the term "open federal financial assistance transaction" refers to a grant, cooperative agreement, loan, federally-guaranteed loan guarantee or other mechanism for providing federal financial assistance whose performance period has not yet expired.

79. Respondent shall not use or expend any money received from the United States government, as a grant or otherwise, directly to finance, implement, perform and/or operate any aspect or any portion of any of the aforementioned SEPs.

80. EPA may, in the exercise of its discretion, grant an extension of the date(s) of performance established in this CA/FO with regard to any of the SEPs, if good cause exists for such extension(s). If Respondent submits a request for extension, such request shall be accompanied by supporting documentation and be submitted to EPA no later than 14 days prior to any due date set forth in this CA/FO, or other deadline established pursuant to this CA/FO. Such extension, if any, shall be approved in writing and shall not be unreasonably denied, withheld or delayed.

81. Respondent shall be liable for stipulated penalties in the event Respondent fails to comply with the terms and conditions regarding the performance, implementation, completion and operation of the SEPs as set forth below in this paragraph:

- a) If the Vacuum Sweeper SEP is not undertaken, Respondent shall pay a stipulated penalty of NINETY THOUSAND (\$90,000.00) DOLLARS;
- b) If the Pelletizer SEP is not undertaken, Respondent shall pay a stipulated penalty of ONE HUNDRED TWENTY THOUSAND (\$120,000.00) DOLLARS;
- c) If the Outreach SEP is not undertaken, Respondent shall pay a stipulated penalty of ONE HUNDRED TWENTY THOUSAND (\$120,000.00) DOLLARS;
- d) If EPA determines that each of the SEPs is satisfactorily completed, and Respondent has spent at least 90 percent of the total amount of money that it was required to expend for said SEPs on expenditures that EPA determines are creditable toward the SEPs (*i.e.* Respondent has spent therefore \$432,000.00, provided EPA has determined said amount is creditable toward the SEPs), Respondent shall not pay stipulated penalty for not having spent the full amount specified herein for each SEP.
- e) If EPA determines that the Vacuum Sweeper SEP is satisfactorily completed and implemented but Respondent has spent less than 90 percent of the amount of money required to be spent for said SEP pursuant to this CA/FO, Respondent shall pay a stipulated penalty equal to 50 percent of the difference between the required amount to be spent (\$180,000.00) and the amount Respondent actually spent on expenditures that EPA

determines are creditable toward said SEP;

f) If EPA determines that the Pelletizer SEP is satisfactorily completed and implemented but Respondent has spent less than 90 percent of the amount of money required to be spent for said SEP pursuant to this CA/FO, Respondent shall pay a stipulated penalty equal to 80 percent of the difference between the required amount to be spent (\$150,000.00) and the amount Respondent actually spent on expenditures that EPA determines are creditable toward said SEP;

g) If EPA determines that the Outreach SEP is satisfactorily completed and implemented but Respondent has spent less than 90 percent of the amount of money required to be spent for said SEP pursuant to this CA/FO, Respondent shall pay a stipulated penalty equal to 80 percent of the difference between the required amount to be spent (\$150,000.00) and the amount Respondent actually spent on expenditures that EPA determines are creditable toward said SEP;

h) For any failure timely to submit any report required for any SEP, or timely to submit any other report required by this CA/FO, Respondent shall pay a stipulated penalty in the amount of \$150.00 for each day any such report is late up to the 30th day, and Respondent shall pay a stipulated penalty in the amount of \$500 for each day any such report is thereafter late, and such penalty(ies) shall continue to accrue from the first date such report(s) is untimely until said report(s) is submitted to EPA.

82. Unless Respondent provides EPA with a writing pursuant to paragraph "83," below, all stipulated penalties are due and payable within 30 days of Respondent's receipt of EPA's written demand for payment of the penalty(ies). The method of payment shall be in accordance with the provisions of paragraph "1" of this section, above. Interest and a late payment handling charge will be assessed in the same manner and in the same amounts as specified in paragraph "5" of this section, above. Penalties shall accrue as provided above regardless of whether EPA has notified the Respondent of the violation or made a demand for payment, but need only be paid upon demand.

83. After receipt of a demand from EPA for stipulated penalty(ies) pursuant to the above paragraph, Respondent shall have twenty (20) days in which to provide EPA with a written explanation of why it believes that a stipulated penalty(ies) is not due and owing, or is not appropriate, for the cited violation(s) of the terms and conditions of this CA/FO (including any technical, financial or other information that Respondent deems relevant).

84. EPA may, in the exercise of its sole discretion, waive or reduce any stipulated penalty due if Respondent has in writing demonstrated to EPA's satisfaction good cause for such action. If, after review of Respondent's submission pursuant to the preceding paragraph, EPA determines that Respondent has failed to comply with the terms and conditions of this CA/FO and concludes that the demanded stipulated penalty(ies) is due and owing, and further EPA has not waived or reduced the demanded stipulated penalty(ies), EPA will notify Respondent, in writing, of its decision regarding the stipulated penalty(ies). EPA will also notify the Respondent if the stipulated penalties are being waived or reduced. Respondent shall then, within 30 days of receipt thereof, pay the stipulated penalty

amount(s) indicated in EPA's notice.

85. Failure of Respondent to pay any stipulated penalty(ies) demanded by EPA pursuant to this CA/FO may result in referral of this matter to the United States Department of Justice or the United States Department of the Treasury for collection or other action provided by applicable law.

General Provisions

86. Any responses, documentation, and evidence Respondent is required to provide to EPA in accordance with the terms and conditions of this Consent Agreement should be sent to EPA's Project Coordinator:

Carl F. Plössl, Environmental Engineer
Hazardous Waste Compliance Section
RCRA Compliance Branch
Division of Enforcement and Compliance Assistance
U.S. Environmental Protection Agency - Region 2
290 Broadway, 21st floor
New York, New York 10007-1866

87. Notwithstanding any of the above, any act, work, measure or undertaking Respondent performs in compliance with the terms and conditions of this Consent Agreement (or has some third-party perform on its behalf) in order to achieve and maintain compliance with applicable RCRA requirements and prohibitions for the operation of the Facility shall not be inconsistent with and shall not relieve Respondent of its obligation to comply with applicable requirements and prohibitions under the Clean Air Act, the Clean Water Act, the Comprehensive Environmental Response, Compensation, and Liability Act, the Occupational Safety and Health Act, and each such act's implementing regulations; nor shall any such act, work or measure or undertaking be inconsistent with or otherwise relieve Respondent of its obligation to comply with any order Respondent has received from or entered into with EPA pursuant to any such applicable legal authority.

88. Notwithstanding any provision that is to the contrary or inconsistent, Respondent agrees to perform all requirements of this CA/FO within the time limits established hereunder, unless the performance is delayed by a *force majeure*. "*Force majeure*," for purposes of this CA/FO, is defined as any event arising from causes beyond the control of Respondent and of any entity controlling, controlled by, or under common control with Respondent, including any contractors and subcontractors, that delays the timely performance of any requirement set forth under this CA/FO notwithstanding Respondent's best efforts to avoid the delay. The requirement that Respondent exercise "best efforts to avoid the delay" includes using best efforts to anticipate any possible *force majeure* event and best efforts to address the effects of any possible *force majeure* event: (a) as it is occurring; and (b) following the possible *force majeure* event, to ensure that the delay is minimized to the greatest extent practicable. Examples of events that are not *force majeure* events include, but are not limited to, increased costs or expenses of any work required to be performed under this CA/FO or the financial difficulty of Respondent to perform such work.

89. If any event occurs or has occurred that may delay the performance of any requirement under this CA/FO, whether or not caused by a *force majeure* event, Respondent shall notify by telephone EPA within 48 hours of when Respondent knew or should have known that the event might cause a delay. In addition, Respondent shall notify EPA in writing within seven days after the date when Respondent first become aware or should have become aware of the circumstances that may delay or prevent performance. Such written notice shall be accompanied by all available and pertinent documentation, including third-party correspondence, and shall contain the following: (a) a description of the circumstances, and Respondent's rationale for interpreting such circumstances as being beyond its control (should that be Respondent's claim); (b) the actions (including pertinent dates) that Respondent has taken and/or plans to take to minimize any delay; and (c) the date by which or the time period within which Respondent proposes to complete the delayed activities. Such notification shall not relieve Respondent of any of its requirements under this CA/FO. Respondent's failure to timely and properly notify EPA as required by this paragraph shall constitute a waiver of Respondent's right to claim an event of *force majeure*. Respondent shall bear the burden of proving that an event constituting a *force majeure* has occurred.

90. If EPA determines that a delay in performance of a requirement under this CA/FO is or was attributable to a *force majeure*, the time period for performance of that requirement shall be extended as deemed necessary by EPA. Such an extension shall not relieve Respondent of any requirement to perform or complete other tasks required by this CA/FO that are not directly affected by the *force majeure*. Respondent shall use best efforts to avoid or minimize any delay or prevention of performance of their obligations under this CA/FO.

91. EPA shall mail to Respondent (to the representative designated below) a copy of the fully executed CA/FO:

Carlos E. Colón Franceschi, Esq.
Toto, Colon, Mullet, Rivera & Sifre, P.S.C.
416 Ponce de León Avenue
Union Plaza, Suite 311
San Juan, Puerto Rico 00918

Such mailing shall constitute service upon Respondent.

92. Respondent has read this CA/FO, understands its terms, and consents to making full payment of the civil penalty in accordance with the terms and conditions as set forth herein (and any additional payments because of late payment of the civil penalty), consents to perform and complete the Supplemental Environmental Projects in accordance with the terms and conditions as set forth herein and in accordance with the schedule set forth herein, consents to the payment of any stipulated penalty(ies) in accordance with the terms and conditions as set forth herein, consents to taking the necessary steps in the operation of the Facility (including those directed by EPA) to achieve and maintain compliance in accordance with the terms and conditions of this CA/FO for such operation, and consents to the issuance of the Final Order accompanying and incorporating the provisions of this Consent Agreement.

93. This CA/FO is not intended, and shall not be construed, to waive, extinguish or otherwise affect Respondent's obligation to comply with any other applicable federal, Commonwealth of Puerto Rico and local law and regulations governing the generation, handling, management, treatment, storage, transport and/or disposal (hereinafter, "handling and managing") of hazardous waste at the premises of and/or from the Facility.

94. This Consent Agreement is being voluntarily and knowingly entered into by the parties in settlement of the civil liability that might have attached pursuant to Section 3008 of RCRA, 42 U.S.C. § 6928, as a result of the violations described in the "EPA Findings of Fact" and the "EPA Conclusions of Law," above, through December 1, 2011. Respondent's payment of the full civil penalty in accordance with the terms and conditions set forth above (including any charge that accrues as a result of an untimely payment of any installment of the civil penalty) and its attainment of compliance with the terms and conditions of this CA/FO, including the requirement that Respondent successfully complete and implement the three Supplemental Environmental Projects as specified herein, shall resolve such liability, except to the extent expressly provided in paragraph 98 of this Section, below.

95. In all documents or reports Respondent submits to EPA pursuant to the terms and conditions of this CA/FO, Respondent shall, by an appropriate official sign and submit to EPA a certification under penalty of law that the information contained in such document or report is true, accurate and correct by signing the following statement:

I certify that, to the best of my knowledge and belief, the information contained in or accompanying this document is true, accurate, and complete. In making this statement, I have relied in good faith on information furnished to me by employees or contractors of The Battery Recycling Company and/or upon my inquiry of the person or persons directly responsible for gathering the information. I am aware that there are significant penalties for intentionally submitting false information, including the possibility of fines and imprisonment for knowing violations.

96. If EPA determines that if any of Respondent's certifications made pursuant to paragraphs 27, 51, 53, 58, 60 or 69 of this section, above, is or has been falsely made, or that any document submitted in compliance with the terms and conditions of this CA/FO contains material misrepresentations of fact, Respondent shall then pay, upon written demand of EPA, a stipulated penalty in the amount of TWENTY-FIVE THOUSAND (\$25,000) DOLLARS. Payment shall be made and transmitted as set forth in paragraph 1 of this section, above.

97. Nothing in this document is intended or is to be construed to waive, prejudice or otherwise affect the right of EPA, or the United States, from pursuing any appropriate remedy, sanction or penalty prescribed by law against Respondent if it is later determined that Respondent has violated a term or condition set forth in paragraph 96 of this section, above. If any certification made pursuant to paragraphs 27, 51, 53, 58, 60 or 69 of this section, above, were deemed by EPA to constitute a willful misrepresentation or a willful concealment of material fact with respect to Respondent's compliance with the terms and conditions of this CA/FO, EPA may initiate (or refer the matter to the Department of

Justice for) a separate criminal investigation pursuant to 18 U.S.C. § 1001 *et seq.*, or pursuant to other applicable law.

98. With regard to any reporting deadlines set forth in this CA/FO or any requirement concerning the frequency for making hazardous waste determinations undertaken pursuant to 40 C.F.R. § 262.11 (as set forth in paragraph 8 of this section, above), the requirements in this CA/FO may be modified and/or amended by EPA in its discretion in response to Respondent's written request. Any such request shall be in writing and contain justification therefore, and any such modification or amendment shall become effective upon written approval of the EPA project coordinator (as identified in paragraph 86 of this section, above).

99. Respondent's full payment of the civil penalty in accordance with the terms and conditions set forth above (including any charge that accrues as a result of an untimely payment of any installment of the civil penalty) and any action taken by Respondent in compliance with or otherwise in connection with the terms and conditions set forth herein shall not affect or prejudice the right of EPA (or the United States on behalf of EPA) to pursue appropriate injunctive relief or otherwise seek equitable relief or criminal sanctions for any violation(s) of law resulting or arising from Respondent's handling and management of solid waste and/or hazardous waste in connection with its operation of the Facility.

100. Respondent hereby waives its right to seek or to obtain a hearing on, or any other judicial review of, this CA/FO, or any part thereof, including the Final Order accompanying the Consent Agreement and further including any right to contest any of the "EPA Findings of Fact," and/or "EPA Conclusions of Law" set forth herein.

101. This CA/FO and any provision herein shall not be construed as an admission of liability in any criminal or civil action, suit or proceeding, except in an action, suit or proceeding commenced by the United States, EPA or any successor agency to enforce this CA/FO or any of its terms and conditions.

102. Respondent voluntarily waives any right or remedy it might have pursuant to 40 C.F.R. § 22.8 to be present during discussions with, or to be served with and reply to any memorandum or other communication addressed to, the Regional Administrator of EPA, Region 2, or the Deputy Regional Administrator of EPA, Region 2, where the purpose of such discussion, memorandum or other communication is to recommend that such official accept this CA/FO and issue the Final Order accompanying the parties' Consent Agreement.

103. Respondent consents to service of a copy of the executed CA/FO by an EPA employee other than the Regional Hearing Clerk of EPA, Region 2.

104. The terms and conditions of this CA/FO shall be binding upon Respondent, its officials, authorized representatives, and successors or assigns.

105. Notwithstanding any provision herein, nothing herein is intended or is to be construed to waive, prejudice or otherwise affect the right of EPA (or the United States on behalf of EPA) from prosecuting any appropriate action permitted by law against Respondent and/or its responsible officials

for any material misrepresentations or false information provided to EPA in any document or report submitted or to be submitted pursuant to the terms and conditions of this Consent Agreement.

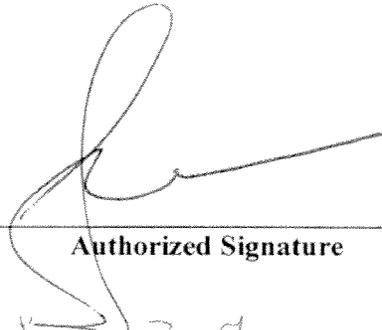
106. Each party shall bear its own costs and fees in connection with this proceeding.

107. Each undersigned signatory to this Consent Agreement certifies that: a) he or she is duly and fully authorized to enter into and ratify this Consent Agreement and all the terms, conditions set forth in this Consent Agreement, and b) he or she is duly and fully authorized to bind the party on behalf of whom (which) he or she is entering this Consent Agreement to comply with and abide by all the terms and conditions of this Consent Agreement.

In re Battery Recycling Company, Inc.,
Docket Number RCRA-02-2012-7101

FOR RESPONDENT:

BY:



Authorized Signature

NAME:

John R. Fyfe

TITLE:

President

DATE:

2/13/12

FOR COMPLAINANT:

BY:



Dore LaPosta, Director
Division of Enforcement and
Compliance Assistance
U.S. Environmental Protection Agency-Region 2

DATE:

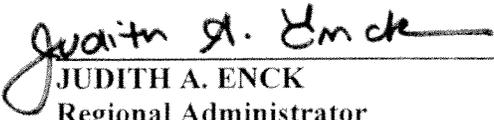
February 21, 2012

In re Battery Recycling Company, Inc.,
Docket Number RCRA-02-2012-7101

FINAL ORDER

The Regional Administrator of EPA, Region 2 concurs in the foregoing Consent Agreement in the case of *In the Matter of Battery Recycling Company, Inc.*, bearing Docket Number RCRA-02-2012-7101. Said Consent Agreement, having been duly accepted and entered into by the parties, is hereby ratified and incorporated into this Final Order, which is hereby issued and shall take effect when filed with the Regional Hearing Clerk of EPA, Region 2. 40 C.F.R. § 22.31(b). This Final Order is being entered pursuant to the authority of 40 C.F.R. § 22.18(b) (3) and shall constitute an order issued under authority of Section 3008(a) of RCRA, 42 U.S.C. § 6928(a).

DATED: February 21, 2012
New York, New York



JUDITH A. ENCK
Regional Administrator
United States Environmental Protection Agency- Region 2

SPENCER FANE

BRITT & BROWNE LLP

ATTORNEYS & COUNSELORS AT LAW

ANDREW C. BROUGHT
DIRECT DIAL: (816) 292-8886
abrought@spencerfane.com

File No. 1163000-0009

August 7, 2012

VIA ELECTRONIC MAIL AND U.S. FIRST CLASS MAIL

Ms. Debra Dobson
Missouri Hazardous Waste Management Commission
P.O. Box 176
Jefferson City, Missouri 65102-0176
debra.dobson@dnr.mo.gov

Re: Exide Technologies' Request to be Added to the Agenda for August 16, 2012, Hazardous Waste Management Commission Meeting and Request for Vote

Dear Ms. Dobson:

I appreciated the opportunity to discuss with you the upcoming Hazardous Waste Management Commission meeting on Thursday, August 16, 2012, in Jefferson City, Missouri. Exide Technologies understood following the last Commission meeting on June 21, 2012, that a vote would be scheduled at the next Commission meeting on Exide's proposed Resolution initially submitted for the April 19, 2012, Commission meeting. When we spoke earlier today, you mentioned that the Commission had not identified Exide's proposed Resolution as a matter scheduled for a Commission vote at the upcoming hearing. Rather, the agenda item would only reflect this matter as an "information-only" topic.

Exide formally requests to be added to the Agenda for the August 16, 2012, Commission meeting to be able to answer any questions the Commission may have, as well as to respond to any information presented by the Department of Natural Resources. We learned today that the Department is being afforded an opportunity to present additional information, apparently as follow-up to previous Commission requests. Nevertheless, Exide believes it is important for an opportunity to be heard on the matter and afforded a chance to respond to any issues that may arise. Accordingly, we request that you add to the Agenda Mr. Jim Price of Spencer Fane Britt & Browne, LLP, as a representative for Exide Technologies.

Exide also formally requests that the Commission and the Missouri Department of Natural Resources schedule a vote on Exide's Proposal at the August 16, 2012, meeting, or in the event a sufficient number of voting Commissioners is not present, at the next available Commission meeting.

1000 Walnut Street, Suite 1400
Kansas City, Missouri 64106-2140

(816) 474-8100 www.spencerfane.com Fax (816) 474-3216

WA 3649033.1

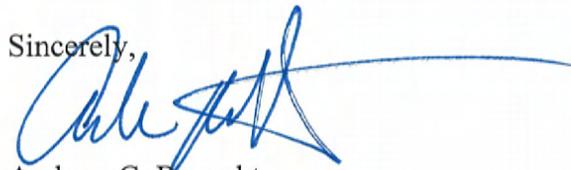
SPENCER FANE
BRITT & BROWNE LLP
ATTORNEYS & COUNSELORS AT LAW

Ms. Debra Dobson
August 7, 2012
Page 2

Exide does not currently have any additional documents for inclusion in the information packets to be distributed to the Commissioners in advance of the meeting, but we will contact you immediately in the event that changes in the next few days.

Please do not hesitate to contact me or Jim Price at 816-474-8100 if you have any questions about the requests of Exide Technologies with respect to the upcoming Commission meeting.

Sincerely,



Andrew C. Brought

ACB/

cc: Kara Valentine, Esq., Assistant Attorney General (via E-mail and U.S. First Class Mail)
Mr. David Lamb, Director, MDNR-HWP (via E-mail and U.S. First Class Mail)



Jeremiah W. (Jay) Nixon, Governor • Sara Parker Pauley, Director

DEPARTMENT OF NATURAL RESOURCES

www.dnr.mo.gov

August 8, 2012

Mr. Andrew C. Brought
Spencer Fane Britt & Browne LLC.
1000 Walnut Street, Suite 1400
Kansas City, MO 64106-2140

Dear Mr. Brought:

The Hazardous Waste Management Commission is in receipt of your letter dated August 7, 2012, requesting to be added to the agenda for their August 16, 2012, meeting. This issue is currently on the agenda and you will be provided an opportunity to address the Commission on this issue during Agenda Item #4, as "Information Only." A copy of this agenda is enclosed.

The open meeting will begin at 10:00 a.m., unless an Executive (Closed) Session is requested as per Section 610.022, RSMo, to which the meeting may be closed by an affirmative vote of the Commission to discuss legal matters, causes of action or litigation as provided by Subsection 610.021(1), RSMo. The open meeting will be held at the Missouri Department of Natural Resources' Hazardous Waste Program Conference Center, Bennett Springs / Roaring River Room, located at 1730 East Elm Street, Jefferson City, Missouri. Although your attendance is not required, this is an open meeting and the public is invited to attend.

Per your request to Ms. Kara Valentine, Commission Counsel, a copy of the current Commission Operating Procedures and a public comment form are also enclosed for your convenience.

If you have questions, please contact Debra Dobson, Commission Assistant, at 573-751-2747 or in writing to the Hazardous Waste Program, P.O. Box 176, Jefferson City, Missouri 65102-0176.

Sincerely,

HAZARDOUS WASTE MANAGEMENT COMMISSION

A handwritten signature in blue ink that reads "Debra D. Dobson".

Debra D. Dobson
Commission Assistant

DDD

Mr. Andrew C. Brought
Page Two

Enclosures: Commission Draft Agenda
Commission Operating Procedures
Public Comment Form

c: Hazardous Waste Management Commission
Mr. David J. Lamb, Director, Hazardous Waste Program

Missouri Hazardous Waste Management Commission Meeting

August 16, 2012

Agenda Item # 5

Tanks Update

Information:

This brief update will discuss the Hazardous Waste Program's Tank efforts on tank closure, registration, tank fees, cleanups and ongoing special projects.

Recommended action:

Information only

Presented by:

Ken Koon, Chief, Tanks Section, HWP

Missouri Hazardous Waste Management Commission Meeting

August 16, 2012
Agenda Item # 5 Continued

2005 Energy Policy Act

Issue:

The Environmental Protection Agency's 2005 Energy Policy Act included changes to the Underground Storage Tank (UST) Program. Missouri has already implemented many of these new requirements. A few outstanding issues remain for the State to address.

Information:

The following list outlines the UST components of the 2005 Energy Policy Act and Missouri's status for each requirement:

- Delivery prohibition ("red tag") - *EPA Approved*
- State reporting, tracking, and public records - *EPA Approved*
- UST inspection frequency - *EPA Approved*
- Financial responsibility for installers / manufacturers OR secondary containment - *Unresolved*
- Operator training - *Unresolved*

In the future, the Hazardous Waste Program may request the Hazardous Waste Management Commission promulgate rules to resolve one or both of the remaining unresolved issues.

Recommended Action:

Information only.

Presented by:

Heather Peters, Compliance and Enforcement Section

Missouri Department of
Natural Resources

Tanks Update Fiscal Year 2012

Ken Koon
Tanks Section Chief

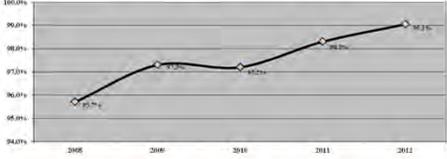


Missouri Department of
Natural Resources

Financial Responsibility

Year	FR Unknown
2008	178
2009	85
2010	90
2011	54
2012	31

Financial Responsibility Compliance Percentages by State Fiscal Year



Missouri Department of
Natural Resources

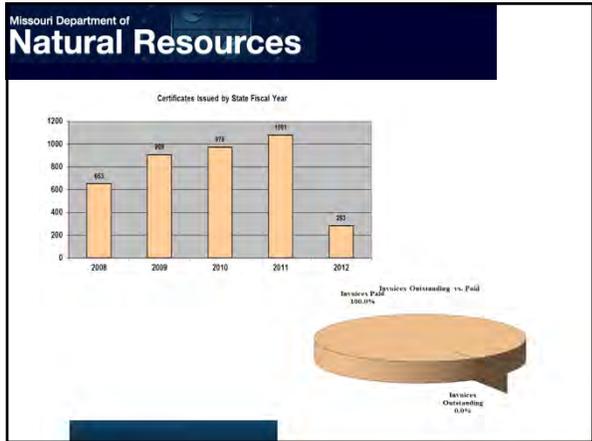
Financial Responsibility

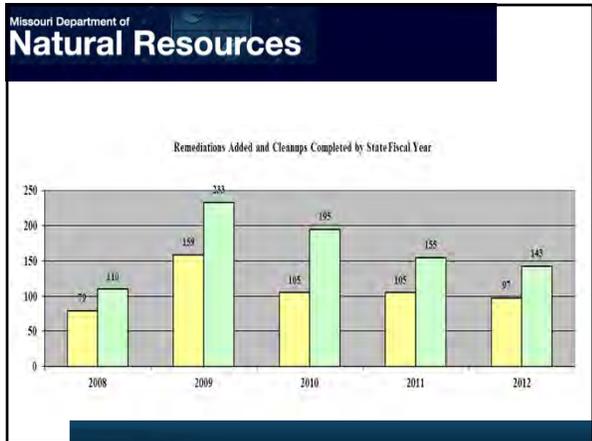
Facilities W/PSTIF	2,594
Facilities W/Acceptable FR Non-PSTIF	567
Facilities State/Federal Exempt	60
Facilities W/Unknown Compliance	31
Total DNR Regulated Facilities	3,252

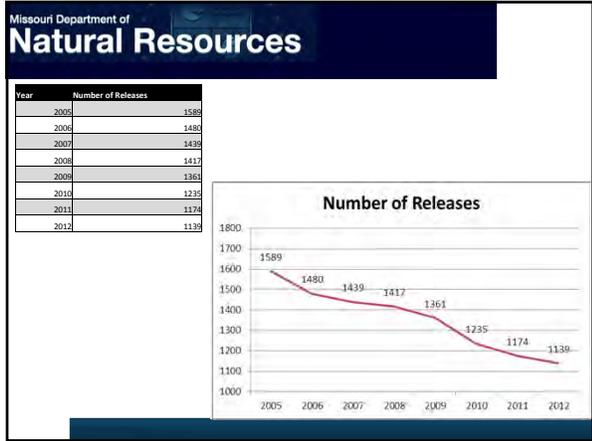
Percentage Breakdown of Financial Responsibility

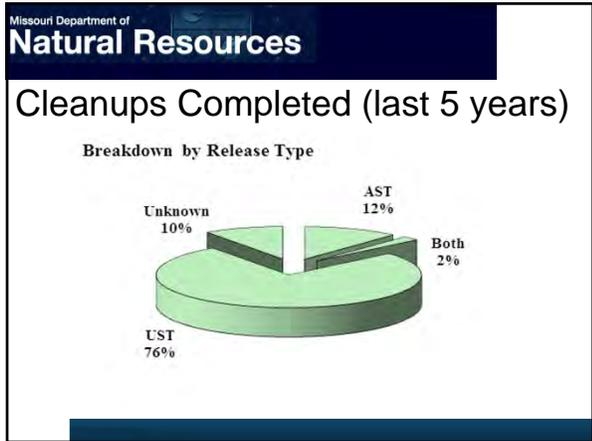


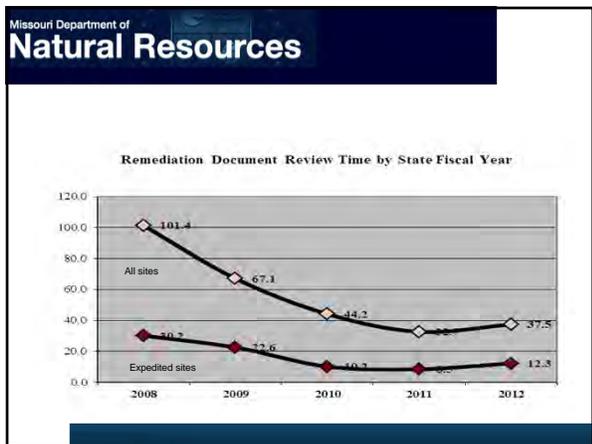


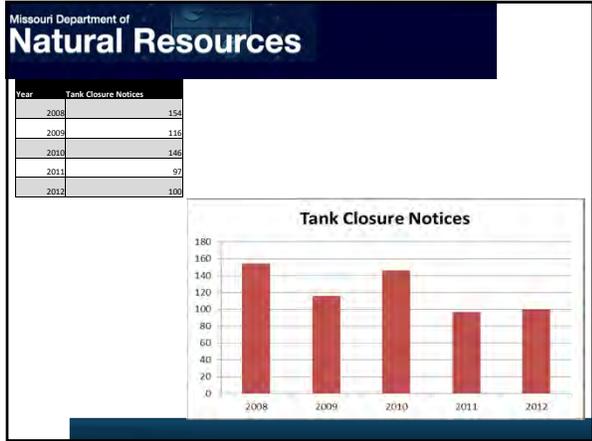


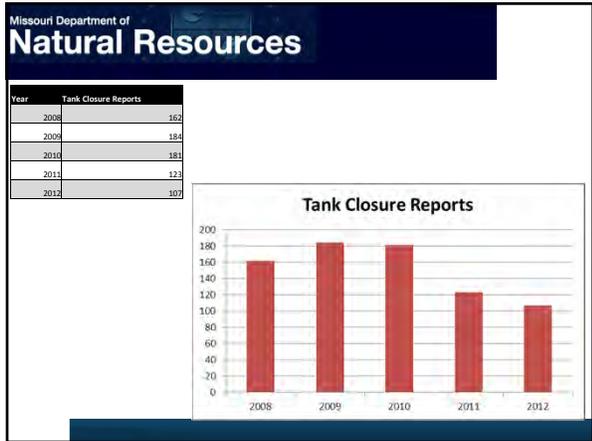


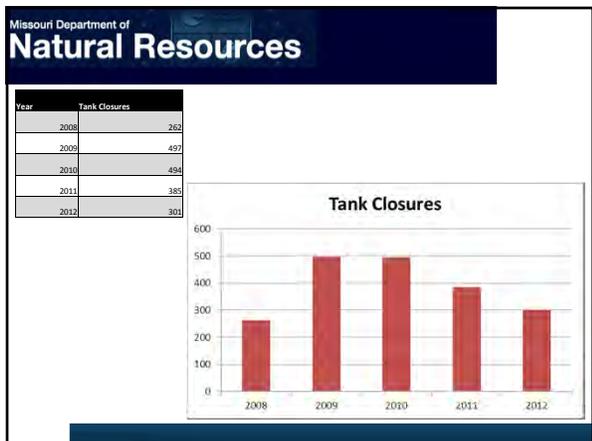










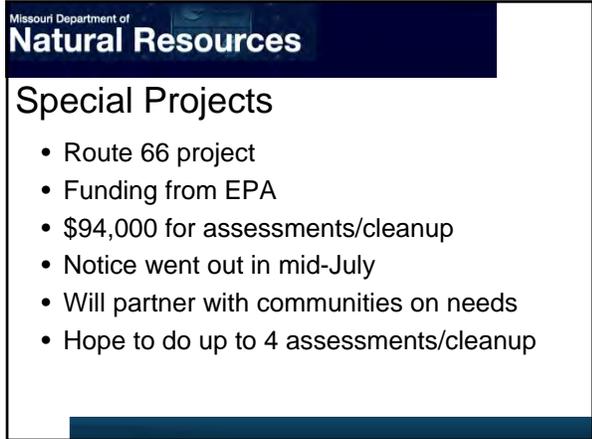




- Missouri Department of
Natural Resources
- ### Remediation Initiative
- Provide more resources to remediation projects
 - Provide more timely reviews
 - Increase number of document reviews
 - Get stalled cleanups going
 - Increase cleanups completed

- Missouri Department of
Natural Resources
- ### Special Projects
- Funding from EPA
 - \$43,000 for cleanup work
 - Working with PSTIF
 - Similar to work conducted under the ARRA project









Missouri Department of
Natural Resources

Energy Policy Act 2005
Underground Storage Tanks

Heather Peters
August 16, 2012

Missouri Department of
Natural Resources

UST Requirements

- Reporting and Recordkeeping
- Delivery Prohibition
- Inspection Programs
- Financial Responsibility OR Secondary Containment
- Operator training

Missouri Department of
Natural Resources

How does EPA require these?

- Grant guidelines- may withhold some or all of our federal funding
- State Program Approval
- Federal regulations have been proposed (comment period closed, under review)

Missouri Department of
Natural Resources

Reporting and Recordkeeping

- Federal Facilities compliance report
- Annual data available
 - Releases- number, sources, causes
 - Compliance rates
 - Equipment failures

Missouri Department of
Natural Resources

Delivery Prohibition- “Red Tag”

DNR may “red tag” a tank if it lacks:

- Spill containment
- Overfill equipment
- Corrosion protection
- Release detection



Missouri Department of
Natural Resources

Inspection Requirements

- All tanks had to be inspected at least once by August 8, 2007
- Tanks must be inspected every 3 years
- February 2011 EPA clarified every 3 calendar years (not fiscal years)

Missouri Department of
Natural Resources

Status

- ✓ Reporting and Recordkeeping
- ✓ Delivery Prohibition
- ✓ Inspection Programs
- ✗ Financial Responsibility OR Secondary Containment
- ✗ Operator training

Missouri Department of
Natural Resources

FR for installers/manufacturers

- Senate Bill 1020 (2006)
- 414.035 RSMo
- 2 CSR 90-30.085
- Missouri Department of Agriculture
- All UST installers/manufacturers must provide proof of financial responsibility
- Only MO and KS opted for FR

Missouri Department of
Natural Resources

FR for installers/manufacturers

EPA deficiencies:

- First dollar coverage
- Length of coverage
- Documentation/explanation of existing program

Missouri Department of
Natural Resources

Operator Training

- Senate Bill 135 (2011)
- 319.130 RSMo
- PSTIF must decide whether to create and fund an operator training program
- March 14, 2012 public hearing
- July 25, 2012 PSTIF Board voted to move forward with operator training

Missouri Department of
Natural Resources

Two unresolved items

- Met on Tuesday, August 14th
 - Environmental Protection Agency- Region 7
 - Missouri Department of Agriculture
 - Missouri Petroleum Storage Tank Insurance Fund
 - Missouri Department of Natural Resources

Parties outlined what is needed and an agreement to provide EPA a response within 60 days.

Missouri Department of
Natural Resources

EPA's Energy Policy Act

- Many of the requirements have been met
- Progress has been made with the final issues
- PSTIF, MDA, and MDNR are working with EPA to resolve the final issues





Missouri Hazardous Waste Management Commission Meeting

**August 16, 2012
Agenda Item # 6**

Rulemaking Update

Recommended Action:

Information Only.

Presented by:

Tim Eiken, Rules Coordinator, HWP

Missouri Hazardous Waste Management Commission Meeting

**August 16, 2012
Agenda Item # 7**

Pesticide Collection Events

Issue:

Hazardous Waste Program and Environmental Services Program staff are continuing to conduct activities under the Missouri Pesticide Collection Program. An update on the progress of these collections is provided in this presentation.

Information:

- The Missouri Pesticide Collection Program is part of a Supplemental Environmental Project (SEP) funded by Walmart as the result of a hazardous waste enforcement case. The SEP was established in a Settlement Agreement that required that \$1,050,000.00 be spent to collect and dispose of pesticides and herbicides.
- The collection program is open only to households and farmers, and is focused on the rural areas of the state.
- Only pesticides and herbicides are accepted at these events.
- The preparation, advertising, and physical collections are being conducted by Environmental Quality Company, with oversight from Department staff.
- Five events have been conducted so far, and four remain with the last event scheduled on October 6th in Kennett.
- Participation has been less than anticipated, and we are currently exploring options for amending the collection program to encourage more customers to participate.

Recommended Action:

Information only.

Presented by:

Ricardo Jones, Compliance and Enforcement Section

Missouri Department of
Natural Resources

Missouri Pesticide Collection Program

Ricardo Jones
Environmental Specialist
Hazardous Waste Program
Compliance and Enforcement



Missouri Department of
Natural Resources

Background

- Inspection of Greenleaf facility in Neosho January 2008 showed multiple HW and FIFRA violations at two facilities.
- NOV issued to Walmart in March 2008 as the generator of the waste.
- Both sites cleanup up in August 2008.
- Walmart and DNR entered into a settlement agreement for civil penalties and SEP in March 2012.

Missouri Department of
Natural Resources

Background

- Settlement included
 - Civil Penalty of \$214,378.
 - Cost recovery for department expenses of \$4,082.
 - SEP for \$1,050,000.
- SEP to sponsor Pesticide collection events for rural Missouri.

Missouri Department of
Natural Resources

Missouri Pesticide Collection Program

A free program for Households and Farmers

- MISSOURI RESIDENTS ONLY
- A convenient, free opportunity to properly dispose of pesticide waste.
- Pesticides from businesses, pesticide production facilities, pesticide distributors, pesticide retailers and the like cannot be accepted.

Missouri Department of
Natural Resources

Event Locations

1. Neosho - June 9, 2012
2. Benton - June 23, 2012
3. St. Joseph - July 7, 2012
4. Cameron - July 21, 2012
5. Bunceton - August 4, 2012
6. Macon - August 18, 2012
7. Marshall - September 8, 2012
8. Warrenton - September 22, 2012
9. Kennett - October 6, 2012



Missouri Department of
Natural Resources

Missouri Pesticide Collection Program

What is accepted?

- Fungicides
- Herbicides
- Insecticides
- Pesticides
- Rodenticides
- Fertilizers containing herbicides or pesticides
- De-wormers & fly-tags



Missouri Department of
Natural Resources

Collection Events

- Saturdays, 9 a.m. – 4p.m.
- Contracted to EQ (The Environmental Quality Company) and overseen by MDNR staff



Missouri Department of
Natural Resources



Neosho Recycling Center, June 6th

Missouri Department of
Natural Resources



Neosho Recycling Center, June 6th

Missouri Department of
Natural Resources



Scott County Maintenance Shed, June 23rd

Missouri Department of
Natural Resources



Scott County Maintenance Shed, June 23rd

Missouri Department of
Natural Resources



St. Joseph Remington Nature Center, July 7th

Missouri Department of
Natural Resources



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Scott County Maintenance Shed, June 23rd

Missouri Department of
Natural Resources



St. Joseph Remington Nature Center, July 7th

Missouri Department of
Natural Resources



St. Joseph Remington Nature Center, July 7th

Missouri Department of
Natural Resources



Cooper County Maintenance Shed, August 4th

Missouri Department of
Natural Resources



Cooper County Maintenance Shed, August 4th

Missouri Department of
Natural Resources



St. Joseph Remington Nature Center, July 7th

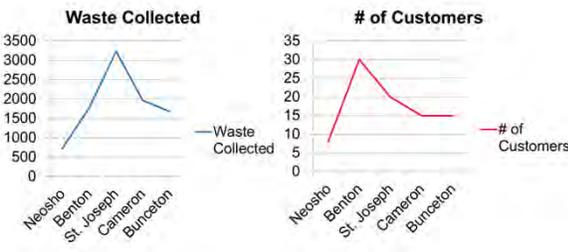
Missouri Department of
Natural Resources



Scott County Maintenance Shed, June 23rd

Missouri Department of
Natural Resources

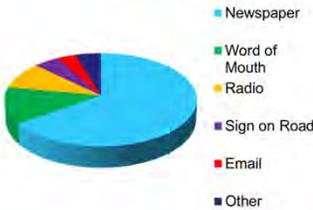
Pesticide Collection Event Results



Location	Waste Collected	# of Customers
Neosho	~1000	~10
Benton	~3200	~30
St. Joseph	~2000	~20
Cameron	~1800	~15
Bunceston	~1500	~15

Missouri Department of
Natural Resources

Pesticide Collection Event Results
How Customers Were Informed



- Newspaper
- Word of Mouth
- Radio
- Sign on Road
- Email
- Other

Missouri Department of
Natural Resources

Results

- Total weight collected 9,371 pounds.
- Total cost for first two events \$88,000.
- Most common pesticides have been Diazinon, Lindane, DDT and Pyrethrins.
- No accidents or major spills.

Missouri Department of
Natural Resources

Conclusion

- Participation has been less than expected.
- Adjustments have been made to improve advertising.
- Events will be suspended after October 6, 2012.
- Currently exploring options for amending the collection program to encourage more customer participation.

Missouri Department of
Natural Resources

Contact:
 Ricardo Jones
 MDNR, HWP, Compliance & Enforcement Section
 573-526-3214
ricardo.jones@dnr.mo.gov

or visit dnr.mo.gov for more info

Missouri Hazardous Waste Management Commission Meeting

August 16, 2012

Agenda Item # 8

Tanks Risk Based Corrective Action (RBCA) Rulemaking Update

Issue:

Update on the Tanks Risk Based Corrective Action Rulemaking

Recommended Action:

Information Only.

Presented by:

Leanne Tippet Mosby – Deputy Director – Department of Natural Resources

Missouri Hazardous Waste Management Commission Meeting

**August 16, 2012
Agenda Item # 9**

Quarterly Report

Issue:

Presentation of the current Quarterly Report.

Recommended Action:

Information Only.

Presented by:

Dee Goss, Public Information Officer, Division of Environmental Quality

Missouri Hazardous Waste Management Commission Meeting

**August 16, 2012
Agenda Item # 10**

**Administrative Hearing Commission Appeals
Status Update-Information Only**

Issue:

Routine update to the Commission on legal issues, appeals, etc.

Information:

Information Only

Presented by:

Kara Valentine, Commission Counsel – Missouri Attorney General’s Office

Missouri Hazardous Waste Management Commission Meeting

**August 16, 2012
Agenda Item # 11**

Public Inquiries or Issues

Recommended Action:

Information Only.

Presented by:

David J. Lamb, Director, HWP

Missouri Hazardous Waste Management Commission Meeting

**August 16, 2012
Agenda Item # 12**

Other Business

Recommended Action:

Information Only.

Presented by:

David J. Lamb, Director, HWP

Missouri Hazardous Waste Management Commission Meeting

**August 16, 2012
Agenda Item # 13**

Future Meetings

Information:

Meeting Dates:

Date	Time	Location
Thursday, October 18, 2012	9:45 A.M.	Bennett Spring / Roaring River Room 1730 East Elm Jefferson City, Missouri 65101
Thursday, December 20, 2012	9:45 A.M.	Bennett Spring / Roaring River Room 1730 East Elm Jefferson City, Missouri 65101
Thursday, February 15, 2013	9:45 A.M.	Bennett Spring / Roaring River Room 1730 East Elm Jefferson City, Missouri 65101
Thursday, April 18, 2013	9:45 A.M.	Bennett Spring / Roaring River Room 1730 East Elm Jefferson City, Missouri 65101
Thursday, June 20, 2013	9:45 A.M.	Bennett Spring / Roaring River Room 1730 East Elm Jefferson City, Missouri 65101
Thursday, August 15, 2013	9:45 A.M.	Bennett Spring / Roaring River Room 1730 East Elm Jefferson City, Missouri 65101

Recommended Action:

Information Only.