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Environmental Protection Agency
EPA West
Room 3334
1301 Constitution Ave., N.W.
Washington, D.C. 20460

Re: Comments of the Association of Battery Recyclers, Inc.
National Ambient Air Quality Standards for Lead
Proposed Rule

Dear Sir or Madam:

The Association of Battery Recyclers, Inc. (ABR) wishes to take this opportunity to supplement its comments on EPA's proposed National Ambient Air Quality Standards (NAAQS) for Lead published on May 20, 2008. EPA has proposed a NAAQS for Lead within the ranges of 0.10 to 0.30 ug/m^3 based on the concentration of lead in TSP. EPA also invites comment on an alternative level up to 0.50 ug/m^3.

The ABR is a national trade association that represents the lead recycling industry. Its members collectively represent virtually all the lead recycling capacity currently available in the United States. Its members reclaim approximately **115,000,000** spent lead acid batteries every year, achieving a recycling rate of approximately **96%**. No other commodity or industry has achieved the recycling rate of performance as the lead recycling industry. Moreover, no other country has created a battery collection and recycling program comparative to the United States.

The ABR members perform an important role in this country. Its members reclaim spent lead acid batteries that otherwise could be improperly disposed. Improper disposal or management of spent lead acid batteries would create a serious threat to the environment and public health.

The ABR has submitted extensive comments to the docket in response to the Advance Notice of Proposed Rulemaking, EPA's risk assessments and the Notice of Proposed Rulemaking. Those comments documented significant concerns, uncertainties

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and deficiencies in the proposal and underlying administrative record. Specifically, ABR's comments demonstrate the science supporting EPA's evidence-based approach remains highly uncertain and fails to support the need to reduce the standard to the lower ranges proposed by EPA.

The ABR has now reviewed publicly available monitoring data from EPA's "Air Quality System" and states for its recycling members and evaluated whether the facilities could attain the proposed NAAQS within the ranges of 0.10 ug/m^3 to 0.50 ug/m^3. Even though EPA will presumably review the monitoring data during the rulemaking, the ABR undertook the effort to make sure that the docket is complete. The analysis of the data demonstrates that of the 12 facilities where there are lead source monitors, 7 of the facilities have enclosed their furnace operations and maintain them under negative pressure by dedicated ventilated systems with filtered exhaust. Yet, of these 7 facilities, only 2 of them are likely to comply with EPA's lower ranges set forth in the agency's proposal. The monitors for these 2 facilities are located approximately one quarter of a mile or greater from the furnace operations of the facilities. As for the other enclosed facilities, the monitors are located very near the operations of the facilities if not on the fence line.

The data confirms that promulgation of a NAAQS in the lower ranges proposed by EPA will threaten the continuing viability of the industry. Indeed, even a majority of those facilities that have enclosed their operations under negative pressure, which represents the most comprehensive control technology, would be faced with non-compliance at the lower ranges of EPA's proposal. If EPA promulgates a standard within the lower ranges of its proposal, the agency will likely be faced with serious health and environmental consequences from the improper handling and disposal of millions of spent lead acid batteries.

Any closure of recycling facilities will likely increase pressure to export spent lead-acid batteries. Exporting batteries to most countries, however, violates the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal ("Basel Convention"). Under the Basel Convention, non-party countries may not export hazardous waste to party countries unless the two nations have a separate agreement. Basel Convention, art. 4 §5; art. 9 §1, *opened for signature* March 22, 1989, 28 I.L.M. 649. This ban applies to spent lead-acid batteries because they are considered hazardous waste under the convention. *Id.* Annex VIII, at 55. The United States is a signatory to the convention, but not a party. *See* Parties to the Basel Convention, http://www/basel.int/ratif/convention.htm. Therefore, the United States may not legally export spent batteries to member nations unless the two countries have a separate treaty. Basel Convention art. 4 §5; art. 9 §1. The United States has entered into separate treaties on the export of hazardous waste only with Canada, Mexico, and the members of the Organization for Economic Cooperation and Development. 40 C.F.R. §262.58. The United States does not have separate treaties with China and many other developing nations that are parties to the Basel Convention. *Id.* Thus, United States' exports to those nations are banned under the Convention.

Encouraging exports will also increase the well-documented risk of improper labeling, handling, and transport within the United States. Lead-acid batteries are subject

to strict standards for shipment, handling, and export under Department of Transportation ("DOT") regulations and the International Maritime Dangerous Goods ("IMDG") Code. ABR has documented widespread mislabeling of spent lead-acid batteries to avoid compliance with those regulations. When batteries are mislabeled as non-hazardous substances, handlers and transporters are unaware of the risks associated with the materials they are handling, and do not take the precautions required for dealing with hazardous substances. Without safe loading and stowing of the hazardous cargo, a release of hazardous materials could occur during loading/unloading or shipment. Such a release could go undetected and migrate, both on the vehicle or vessel, and possibly into the environment. If the release came into contact with an incompatible hazardous material, further harm could occur. The potential closure of battery recycling operations in the United States would significantly increase the likelihood of this result, and negate any perceived health and environmental benefits EPA may achieve by promulgating a standard within the lower ranges of the agency's proposal.

Further, the closure of recycling operations in the United States could also increase the likelihood of illegal exports to countries which are not signatories of the Basel Convention or subject to a separate agreement. Many countries do not have protective regulations and controls to properly manage the handling, shipping, recycling, and disposal of spent lead-acid batteries and their components. Exporting batteries to such nations poses the risk of worker exposure to hazardous constituents and/or a release of a hazardous substance in the receiving country's environment. The Report of the Special Rapporteur of the U.N. Commission on Human Rights recently expressed concerns that "the recycling of lead-acid batteries is one of the greatest potential sources of risk, especially for exposed workers in the informal sector in many developing countries." Adverse Effects of the Illicit Movement and Dumping of Toxic & Dangerous Products & Wastes on the Enjoyment of Human Rights, U.N. Commission on Human Rights, Economic and Social Council, E/CN.4/2003/56/Add.1, 10 January 2003, p. 17.

EPA's recently released proposed rule to modify the export regulations for spent lead-acid batteries and other hazardous waste notes the increased risks associated with exporting batteries to developing nations:

> Human health and environmental risk issues can arise when these recycling processes are performed with insufficient human health or environmental safety controls. The results could include: (1) significant increases in elevated blood lead levels in facility workers and their families; (2) increases in uncontrolled releases of lead-laden slag to soil, surface water and ground water sources; and (3) lead air-emissions from lead smelting without the proper air-emissions controls.
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> EPA, Proposed Rule, Revisions to: the Requirements for Transboundary Shipments of Wastes between OECD Countries, the Requirements for Export Shipments of Spent Lead-Acid Batteries, the Requirements on Submitting Exception Reports for Export Shipments of Hazardous Wastes, and the Requirements for Imports of Hazardous Wastes ("Proposed Rule"), at 19-20

> (prepublication version released Sept. 19, 2008), *available at* http://www.epa.gov/osw/hazard/international/oecd-slab-pr.pdf.

In June 2008, CHR Metals Limited undertook an extensive examination of the potential impacts attributable to a reduction in the Lead NAAQS. In its report, entitled "Potential Impact of Change in US Air Lead Limits on Domestic and Global Lead Markets," CHR Metals stated the following on page 23 with respect to the export of spent lead-acid batteries from the United States:

> Where imported scrap batteries may be more readily welcomed is by recyclers operating within the informal sector in emerging economies, particularly Asia....Much of the existing recycling capacity in these countries currently operates within the informal sector but, even in the more formal sector, the technology employed may be very basic and adherence to environmental regulations is minimal. This means that lead recycling today in many, if not most, emerging economies, poses a very serious threat to the wider environment (air, water and land pollution), to workers employed directly in the industry and residents in towns and villages in proximity to recycling plants.

In contrast, the U.S. battery recycling industry is an experienced, highly regulated industry with a documented successful recycling record. As noted in EPA's proposed export rule:

> In the U.S., the Occupational Safety and Health Administration (OSHA) has developed standards to address and minimize workplace exposure to lead (29 CFR §1910.1025). These standards establish permissible exposure limits; exposure monitoring, respiratory protection and safety procedures; and proper warning and sign-age requirements for facilities processing lead. Proper ventilation, training and safety procedures also are necessary. In less developed countries, these precautions may be overlooked, leading to dangerous conditions.

Proposed Rule, at 33.

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In conclusion, in light of significant scientific uncertainties regarding the risk of exposure to very low levels of lead and the questionable benefits from establishing a standard at the low ranges proposed, we request that EPA consider the potential health and environmental risks from promulgating a rule that will lead to closure of battery recycling operations in the United States. If such a standard results, as expected, in the closure of battery recycling facilities, EPA will likely be faced with potential environmental and human health risks attributable to the mishandling, improper disposal or illegal export of millions of spent lead acid batteries. Such a result would negate any

possible health or environmental benefits derived from the promulgation of a standard at the lower ranges of EPA's proposal.

Sincerely yours,

Robert N. Steinwurtzel