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JUL 15 2010

STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW COURT

DHEC  
OFFICE OF GENERAL COUNSEL

Coastal Conservation League and League	)	Docket No. IO-ALJ-07-0477-CC
of Women Voters of South Carolina,	)	
	)	
Petitioners,	)	
	)	<u>SETTLEMENT AGREEMENT AND</u>
vs.	)	<u>ORDER</u>
	)	
South Carolina Department of Health and	)	
Environmental Control and Johnson	)	
Controls Battery Group, Inc.,	)	
	)	
Respondents.	)	
	)	

SETTLEMENT AGREEMENT AND ORDER

This final Settlement Agreement and Order (the "Agreement"), made and entered into by and among Permittee Johnson Controls Battery Group, Inc. ("JCI"), and the League of Women Voters of South Carolina, the Coastal Conservation League ("Petitioners"), and the South Carolina Department of Health and Environmental Control ("DHEC") (each a "Party," and collectively, the "Parties"), is effective upon execution by all of the Parties and approval by the Administrative Law Court (the "Effective Date").

PREAMBLE

1. The DHEC staff issued to JCI a permit known as Air Synthetic Minor Construction Permit No. 1040-0129-CA in order to construct a battery recycling facility in Florence, South Carolina (the "Florence Recycling Center" or "Recycling Center");
2. The Petitioners filed timely requests for final review of DHEC's staff decision to issue the above-referenced permit and a review conference before the DHEC Board was held on April 8, 2010 under Board Docket No. IO-RFR-17;
3. The DHEC Board affirmed DHEC's staff decision to issue the above-referenced permit and issued a written Final Agency Decision in that regard on May 7, 2010;
4. Pursuant to S.c. Code Ann. § 44-1-60, Petitioners have requested a review of the Board's Final Agency Decision with the South Carolina Administrative Law Court as provided therein within thirty days after the receipt of the Final Agency Decision and;

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5. The Parties wish to settle this matter and resolve all permitting issues and potential challenges concerning the issuance of Air Synthetic Minor Construction Permit No. 1040-0129-CA without further litigation and the attendant costs of the same.

TERMS AND CONDITIONS

NOW THEREFORE, for and in consideration of the mutual covenants, conditions, promises contained herein, and other valuable consideration, the receipt and sufficiency of which is expressly acknowledged, the Parties agree as follows:

1. Petitioners Will Not Pursue Appeal. As consideration for the covenants provided by ICI and DHEC (as set forth below), Petitioners hereby acknowledge and agree that they will, with consent of this Court, dismiss with prejudice the present action and will not pursue any further challenges of the Final Agency Decision issued by the DHEC Board on May 7, 2010 to the South Carolina Administrative Law Court for the issuance of Air Synthetic Minor Construction Permit No. 1040-0129-CA.

2. Covenants by ICI and DHEC. As consideration for the covenants provided by Petitioners (as set forth above), ICI and DHEC hereby acknowledge and agree;

- a. that ICI will support the installation and maintenance of three (3) ambient air quality monitors ("Monitors") for lead located as identified in Attachment A with approximate coordinates provided as follows:

Coordinate System (Datum)	Longitude and Latitude (WGS84)		UTM zone 17 North (NAD83)	
	Longitude (Degrees West)	Latitude (Degrees North)	x_proj (meters)	y_proj (meters)
Entrance	-79.572611	34.164083	631567	3781270
Southwest	-79.569833	34.155639	631837	3780337
Northeast	-79.562169	34.167414	632525	3781653

The Monitors will be operated as part of the South Carolina network and consistent with the provisions of 40 CFR Part 58.

- b. that ICI will perform all the items identified at Attachment B and will incorporate, at a minimum, the items identified at Attachment B for the control of fugitive and/or dust emissions, in the standard operating procedures manual (SOP) required by condition 28 of Air Synthetic Minor Construction Permit No. 1040-0129-CA.
- c. that ICI will provide Petitioners a copy of the standard operating procedures manual required by condition 28 of the Synthetic Minor Construction Permit No. 1040-0129-CA at the time the proposed SOP is

submitted to DHEC for approval. Petitioners may submit comments to DHEC on the SOP. The Department may consider those comments and mayor may not respond to the comments. However, submission of any comments will not trigger any new or additional obligations or permitting requirements for DHEC.

- d. that DHEC will establish a web address where monitoring data, stack test protocols and stack test reports as well as DHEC contacts for the ICI Florence Recycling Center will be maintained. DHEC will post monitoring data from the Monitors for the Florence Recycling Center on its web address for the Recycling Center in an expeditious manner after verification of ambient concentration data, a period which should not exceed two weeks from the calculation and verification of ambient concentration data. DHEC will also provide a web link from its web address to a web address maintained by ICI for the Florence Recycling Center. ICI will also maintain monitoring data from the Monitors on its web address for the Recycling Center and will continue to post and maintain verified monitoring data for the most recent twelve month operating period for the life of the operation of the Recycling Center. DHEC and/or ICI will send a notice, in writing and/or electronically, of the existence of the above-web sites to those individuals that submitted written comments on Air Synthetic Minor Construction Permit No. 1040-0129-CA during the formal public comment period.
- e. ICI will commence operation of the Recycling Center as follows:
  - i. Operations will begin at up to and including 1/2 of the permitted production capacity over the initial 3 months of operation during which time the Monitors will be sampled every three days.
  - ii. After the initial three months of operation, if the three month average lead value for each Monitor is at or below  $0.075 \text{ ug/m}^3$ , production may increase up to full permitted production capacity. ICI shall maintain daily records of mass of lead ingots produced. This information along with monitoring data for the Monitors shall be provided to DHEC and Petitioners at the end of the initial three month period of operation for the initial three months of operation. ICI identifies production data as confidential business information. Nothing in this Agreement shall be interpreted to obligate *ICI*, or constitute a waiver by ICI, to provide information to DHEC, Petitioners, or to any other parties, any information beyond the agreement to provide the specific information identified in this Agreement to DHEC and Petitioners for the specific time periods addressed. Likewise, nothing in this Agreement shall be interpreted as in any way limiting the rights of DHEC or Petitioners to otherwise request or demand

information from JCI as might be otherwise provided for under applicable permits or otherwise provided for by applicable law.

- iii. If after the initial 3 months of operation, the three month average lead value from any Monitor is above 0.075 ug/m<sup>3</sup>, JCI will investigate the reason why monitored lead values are higher than projected modeled values. JCI will not increase production rates above 1/2 of permitted production capacity until there is a three month rolling period in which average lead values for all the Monitors are at or below 0.075 ug/m'. If JCI makes a demonstration under the provisions of this subsection (iii), JCI will provide monitoring data to DHEC and Petitioners for the Monitors as well as production data for mass of lead ingots produced for any months relied upon by JCI to demonstrate that its operations satisfy the conditions of this subsection (iii), subject to the same confidentiality reservations identified in (e)(ii) above.
- iv. After the facility begins operation at full production capacity as specified above, measurements from Monitors will occur every six days. The Monitors will be operated as part of the South Carolina network and consistent with the provisions of 40 CFR Part 58.

- f. that after beginning operation at full production values as specified in paragraph 2(e) above, if any three month rolling average values for lead for any Monitor exceeds the 0.15 ug/m' National Ambient Air Quality Standard (NAAQS) for lead, DHEC will collect samples from that Monitor every three days until such time as there is a three month period in which the average lead value for that Monitor is at or below 0.15 ug/m', at which time sampling will revert to once every 6 days.

3. Enforcement by Parties. Any failure to comply with the conditions of the covenants as stated herein shall be enforceable by any Party to this Agreement.

4. Compromise Agreement. This Agreement is the compromise of disputed claims regarding the appropriateness of the permit issued to JCI. The Parties agree that all statements made in connection with the negotiation or execution of this Agreement shall be subject to Rule 408 of the South Carolina Rules of Evidence.

5. Binding Effect of Agreement. This Agreement shall be binding upon and inure to the benefit of the Parties and each of their respective agents, employees, representatives, officers, directors, principals, attorneys, shareholders, parent and/or subsidiary corporations, affiliates, successors, and predecessors in interest.

6. Assignment. This Agreement shall not be assigned or transferred without the express written consent of all Parties.

7. Entire Agreement. This Agreement embodies the entire agreement of the Parties and supersedes all prior written or oral agreements or understandings between the Parties on the subject matter of this Agreement. Notwithstanding, nothing in this Agreement is intended to alter or reduce the obligations of Permittee under Air Synthetic Minor Construction Permit No. 1040-0129-CA, nor to relieve Permittee of its duty to comply with all applicable laws.

8. Amendments. No amendment, modification, or other variation of any of the terms of this Agreement will be effective unless it is made in a writing signed by the Parties expressly stating that such instrument is intended to amend, modify, or otherwise supplement the Agreement, and then subsequently approved by this Court.

9. Severability. Whenever possible, each provision of this Agreement shall be interpreted so as to be valid under existing law. A finding of invalidity as to any provision of this Agreement or any portion thereof shall void only that provision or portion and no other, and this Agreement shall be interpreted as if it did not contain the invalid provision or portion.

10. Reliance on the Advice of Counsel. Each Party represents that, in the negotiating and drafting of this Agreement, it has been represented by counsel of its choice. Each Party affirms that its counsel has had a substantial role in the drafting and/or negotiating of this Agreement. Therefore, each Party agrees that no rule of construction to the effect that any ambiguities are to be resolved against the drafter shall be employed in the interpretation of the Agreement.

11. Warranty of Authority. The individuals executing this Agreement personally represent and warrant that they have the necessary power and authority to execute this Agreement on behalf of each Party identified as being represented, and that their signatures are sufficient to make this Agreement the binding and enforceable obligation of each Party identified.

12. Choice of Law. This Agreement shall be construed, interpreted, and enforced in accordance with the laws of the State of South Carolina. Any dispute, action, or proceeding arising out of or relating to this Agreement shall be within the exclusive jurisdiction of the South Carolina Administrative Law Court and, if an appeal of a decision of the Administrative Law Court is sought, the State courts of South Carolina. The Parties agree and consent to personal jurisdiction in the foregoing tribunals with respect to any dispute, action, or proceeding arising out of or relating to this Agreement.

13. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original but all of which shall constitute one and the same document. Signatures provided by facsimile or portable document format ("PDF") shall have the same effect as original signatures.

14. Communications. Any written communications required under this Agreement shall be made by mailing a copy of the document to the following addresses:

- a. Johnson Controls Battery Group, Inc.  
Bernard F. Hawkins, Jr.  
Nelson Mullins Riley & Scarborough  
Meridian, 17th Floor  
1320 Main Street  
Columbia, SC 29201
- b. Petitioners  
Robert Guild  
314 Pall Mall St.  
Columbia SC 29201
- c. The South Carolina Department of Health and Environmental Control  
Office of General Counsel  
Sara Bazemore  
2600 Bull Street  
Columbia, SC 29201

Finding the Agreement fair and reasonable, this Court approves the Agreement.

**AND IT IS SO ORDERED.**

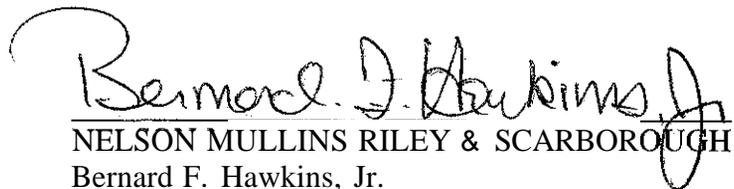
July 14, 2010



\_\_\_\_\_  
The Honorable S. Phillip Lenski

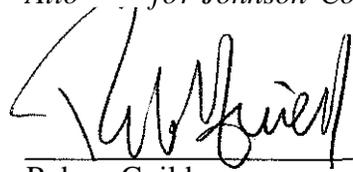
WE CONSENT:

July 8, 2010



\_\_\_\_\_  
NELSON MULLINS RILEY & SCARBOROUGH  
Bernard F. Hawkins, Jr.  
Meridian, 17th Floor  
1320 Main Street  
Columbia, SC 29201  
*Atto . . . for Johnson Controls Battery Group, Inc.*

July 8, 2010



\_\_\_\_\_  
Robe Guild  
314 Pa: Mall St  
Columbia, SC 29201  
*Attorney for the League of Women Voters of South Carolina and the Coastal Conservation League*

July 7, 2010

A handwritten signature in black ink that reads "Sara P. Bazemore". The signature is written in a cursive style with a horizontal line underneath the name.

Sara Bazemore  
S.C. Department of Health and Environmental Control  
Office of General Counsel  
2600 Bull Street  
Columbia, SC 29201  
*Attorney for SC DREC*



**LEGEND**

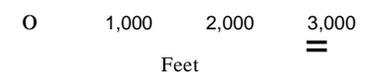
PROPERTY BOUNDARY -APPROXIMATE

○ AMBIENT AIR MONITORING STATION

**NOTES**

AERIAL IMAGES FROM TERRASERVER (1994. BLACK AND WHITE).

**ATTACHMENT A**



JOHNSON CONTROLS, INC. FLORENCE, SOUTH CAROLINA		
AMBIENT AIR MONITORING LOCATIONS		
DRAWN BY: IUI	SCALE: AS NOTED	PROJECT NO: 07682 OF
CHECKED BY: RFV		DATE: JUNE 2010
APPROVED BY: WMB		
<b>RMT</b>		Pinewood Plaza Ctr., Suite 100 30 Pinewood Drive Greenville, SC 29615-3535 Phone: 864-281-0030 FAX: 864-281-0268

## Attachment B

### Standard Operating Procedures (SOP) Manual -- Minimal Elements for Control of Fugitive and Dust Emission Sources

JCI will perform all the items identified in this Attachment B and will incorporate, at a minimum, the items identified in this Attachment for the control of fugitive and/or dust emissions, in the standard operating procedures manual required by Condition 28 of Air Synthetic Minor Construction Permit No. 1040-0129-CA.

- 1) Where records are generated under this Attachment, these records will be maintained for at least five years.
- 2) Processes will be designed with hoods that have face velocities noted below. There will be an initial verification that the hoods meet these face velocities and there will be subsequent verification every two years that the hoods continue to meet these face velocities according to the specifications of 40 CFR 63.547(d). Documentation of the verifications will be kept on file; deviations, if any, will be reported to SCDHEC semiannually. Face velocities will be as follows:
  - a) furnace and dryer charging hoppers, chutes, and skip hoists (300 fpm face velocity)
  - b) furnace lead taps, and molds during tapping (300 fpm face velocity)
  - c) furnace slag taps and molds during tapping (300 fpm face velocity)
  - d) refining kettles (250 fpm face velocity)

- e) dryer transition pieces (350 fpm face velocity). Pressurized dryer breaching seals at each transition piece allowed as alternative
  - f) agglomerating furnace product taps (300 fpm face velocity)
- 3) The battery breaking area will be totally enclosed with initial and subsequent annual verifications that total enclosure criteria are met. Documentation of the verifications will be kept on file and deviations, if any, will be reported to SCDHEC semiannually.
  - 4) The furnace area will be totally enclosed and ventilated to control devices with an initial and subsequent annual verification that total enclosure criteria are met. Documentation of the verifications will be kept on file and deviations, if any, will be reported to SCDHEC semiannually.
  - 5) The refining and casting area will be totally enclosed and ventilated to control devices with an initial and subsequent annual verifications that total enclosure criteria are met. Documentation of the verifications will be kept on file and deviations, if any, will be reported to SCDHEC semiannually.
  - 6) The materials storage and handling areas will be totally enclosed and ventilated to control devices. There will be a vehicle wash at each exit with initial and subsequent annual verifications that total enclosure criteria are met. JCI will conduct monthly inspections of vehicle wash equipment to verify proper operation. Documentation of the verifications and inspections will be kept on file and deviations, if any, will be reported to SCDHEC semiannually.
  - 7) No source/plant shall use any method of materials handling which will generate fugitive particulate matter that is not fully described in the permit

application. Monthly inspections will be conducted to identify unpermitted material handling operations. Documentation of the inspections will be kept on file and deviations, if any, will be reported to SCDHEC semiannually.

- 8) Volatile organic compounds shall not be used for dust control purposes. Oil treatment is also prohibited. JCI will implement a new material MSDS review process to confirm that VOC-containing dust suppressants are not brought onsite. Records will be kept on file; deviations, if any, will be reported to SCDHEC semiannually.
- 9) Hoods, scrubbers, fabric filters or other dust cleaning devices will be installed and used where feasible and effective to capture and contain fugitive particulate matter while handling dusty materials.
- 10) A water slurry will be used to hydraulically transport materials collected by baghouses.
- 11) Wet vacuum sweeping will occur at plant roadways, twice per day, except on days of natural precipitation.
- 12) Speed limits will be imposed of not greater than 15 miles per hour for vehicular traffic on plant property.
- 13) Plant roadways used to deliver raw materials to or remove products from the facility will be paved and earth or other materials deposited by vehicular traffic, earth moving equipment, water erosion or other means, will be promptly removed from paved road surfaces.
- 14) Daily records will be maintained to verify pavement cleaning. Records of natural precipitation will also be maintained if the natural precipitation

exception (11 above) is used (see attachments). Records will be kept on file and deviations, if any, will be reported to SCDHEC semiannually.

- 15) Negative building pressure ventilation systems will continue to be operated during maintenance activities where dust generation potential exists. Daily records will be maintained to document operation of the building negative pressure ventilation systems to demonstrate consistent negative pressure. Records will be kept on file; deviations, if any, will be reported to SCDHEC semiannually.
- 16) There will be maintenance and quarterly structural integrity inspections of capture and control systems at all lead emission points (*e.g.*, baghouses, HEPA filters, capture hoods, and ductwork). Records will be maintained to document inspections and maintenance and kept on file, and deviations, if any, will be reported to SCDHEC semiannually.
- 17) Rain caps will be prohibited on any stack that is a lead emissions source and there will be an initial and subsequent annual verification that rain caps are not being used on such stacks. Documentation of the verifications will be kept on file and deviations, if any, will be reported to SCDHEC semiannually.
- 18) Materials capable of generating fugitive lead-dust will be stored in sealed containers. Examples of such materials include spent filters used in lead control devices and lead-containing waste generated from housekeeping requirements. Monthly inspections will be conducted to identify use of containers that are not sealed. Documentation of the inspections will be kept on file; deviations, if any, will be reported to SCDHEC semiannually.

- 19) JCI will immediately respond to any identified spills of toxic or hazardous materials. Plant personnel shall walk around the perimeter of the developed facility on a daily basis to inspect for any indication of environmental problems such as spills of any toxic or hazardous materials. Records of inspections will be maintained on file and deviations, if any, will be reported to SCDHEC semiannually.
- 20) Plant personnel shall inspect on a daily basis, and as necessary, empty and clean out all drums containing Personal Protective Equipment (PPE). Records of inspections will be maintained on file and deviations, if any, will be reported to SCDHEC semiannually.
- 21) Equipment shall be decontaminated or containerized prior to leaving a ventilated building. Records of inspections will be maintained on file and deviations, if any, will be reported to SCDHEC semiannually.
- 22) During any structural demolition operations, the material being demolished shall be adequately wetted down to suppress dust generation. Procedures for structural demolition activities will be developed, implemented, and documented.
- 23) JCI will keep adequate records to verify the following:
  - a) that housekeeping activities are completed, and that inspection and maintenance of emission collection system(s) and control device(s) are performed, including the name of the person performing the activity, and the dates on which specific activities were completed.
  - b) that readings are being taken as required from the ambient air lead monitoring stations.

- 24) Charge preparation furnace hoppers, chutes, and conveyors will be designed with enclosures and/or capture hoods to route the emissions to control devices. There will be an initial verification that the enclosures and/or hoods meet these design criteria and there will be a verification every two years that the enclosures and/or hoods continue to meet these design criteria. Documentation of the verifications will be kept on file and deviations, if any, will be reported to SCDHEC semiannually.
- 25) Rotary furnaces will be constructed with receiving hoods at charge doors, slagging points, tapping points and flue connections to route emissions to control devices. There will be an initial verification that the hoods meet these criteria and verification every two years that the hoods continue to meet these design criteria. Documentation of the verifications will be kept on file and deviations, if any, will be reported to SCDHEC semiannually.
- 26) Emissions from receiving hoods for all refining kettles will be routed to a control device. There will be an initial verification that the hoods meet this design and verification every two years that the hoods continue to meet this design. Documentation of the verifications will be kept on file; deviations, if any, will be reported to SCDHEC semiannually. The following practices will be included in the design of the facility:
  - a) All building exterior access doors used for truck traffic will be designed with wind protection. Personnel doors normally used for entrance/exit will be equipped with automatic closure mechanisms and an audible alarm that will sound if the door is open for more than one continuous

minute. Emergency exits will be equipped with an audible alarm that will sound immediately upon opening of the door. Windows will either be of a design that does not allow opening or will be maintained in a closed position at all times. Monthly integrity inspections will be conducted and records will be maintained to verify proper operation of automatic closure mechanisms, alarms, and window position.

- b) Floor surfaces within process areas will be paved and there will be an initial verification that the floors are paved.
- c) There will be proper staging and disposal of collected materials from vacuuming and wet sweeping equipment. There will be monthly inspections of vacuuming and wet sweeping equipment for proper operation and records of these inspections will be maintained.
- d) Raw materials will be moved to charge preparation and finished goods will be handled with use of indoor vehicles only.
- e) A central vacuum system will be provided for housekeeping.
- f) The storm water management system will be designed to assist in removing lead that may fall on impervious surfaces at the facility.
- g) The Recycling Center will be designed to minimize impervious surfaces and to maximize the use of vegetative cover where appropriate.
- h) JCI recognizes the benefit of maintaining tree cover on the land adjacent to the plant as a buffer, and JCI will maintain tree cover on land adjacent to the plant consistent with good forestry practices and will remove and/or trim trees only as needed for good forestry management or as needed for current or future development of the property (examples,

including but not limited to, site clearing for buildings, parking lots, loading and unloading areas, entrance and exit ways, roads, monitoring locations and access ways, utility and utility rights of way (such as for power, gas, sewer, communication, etc.), stormwater management systems, rail spurs, etc.). JCI has no intent to clear-cut trees adjacent to the plant or harvest these trees beyond that needed to accomplish the purposes addressed above, and will minimize removal of trees with respect to accomplishing these purposes.

- 27) The buildings will be constructed with zone ventilation concepts that promote directing any air exchanged between buildings towards the foundry emission control equipment. There will be an initial verification that the building was designed with zone ventilation. Documentation of the verification will be kept on file and deviations, if any, will be reported to SCDHEC in the first semiannual report.
- 28) All truck openings will be equipped with an interlock system to prevent simultaneous opening of air lock doors. The doors will also be equipped with an audible alarm that will sound if a door remains open for more than 5 continuous minutes. Monthly observation of air lock operation and seals will be documented and kept on file; deviations, if any, will be reported to SCDHEC in the first semiannual report.
- 29) The following provisions will be incorporated into operating procedures and employee training.

- a) vehicles and personnel flow patterns will be directed in a manner to minimize the potential for lead being carried from one area of the building to another.
  - b) entry/exit points will be established so that there are specific areas designated for the distribution, inspection and maintenance of personal protective equipment.
  - c) Uniforms will be collected at a centralized location and laundered at the facility.
  - d) There will be vacuum cleaning stations in the facility to facilitate dust removal and good housekeeping.
  - e) There will be designated changing areas for employees to remove uniforms and/or personal protective equipment prior to leaving the facility.
  - f) There will be hand wash stations to facilitate employee hygiene.
  - g) There will be showers to facilitate employee hygiene.
  - h) There will be a cafeteria to allow employees to eat within the building and minimize exit and entry into the building.
  - i) There will be footwear wash stations to minimize materials being transported from process areas into other areas of the facility.
- 30) There will be physical isolation of lead processing areas from adjacent non-lead processing areas. There will be initial verification that the lead isolation is used. Documentation of the verification will be kept on file and deviations, if any, will be reported to SCDHEC in the first semiannual report.

**SOP Checklist for Plant Roadway Wet Vacuum Sweeping**

Date of Wet Sweeping: \_\_\_\_\_

Time of First Wet Sweeping Completion: \_\_\_\_\_

Name and Initials of Individual(s)  
Performing the wet sweeping: \_\_\_\_\_

Time of Second Wet Sweeping Completion: \_\_\_\_\_

Name and initials of Individual(s)  
Performing the wet sweeping: \_\_\_\_\_

If cleaning was unnecessary, check the reason below:

Rain

Snow

Ice

Sand or other material was applied to roadways to provide traction on ice, snow, or frozen precipitation.

Comments: \_\_\_\_\_

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## **SOP Checklist for Vehicle Washing**

(For vehicles exiting building areas where lead dust may be present!

Truck Wash Location / Description: \_\_\_\_\_

Date and Time of Truck Wash: \_\_\_\_\_

Name and Initials of Person

Conducting or Responsible for the Cleaning: \_\_\_\_\_

Comments:\_\_\_\_\_

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