



**RHODE ISLAND
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT**

OFFICE OF LEGAL SERVICES

235 Promenade Street, Room 425
Providence, Rhode Island 02908

February 29, 2024

Via e-mail only to rich@rilawcpa.com and rland@crflp.com

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Rhode Island Recycled Metals, LLC (Operator)
c/o Richard Nicholson, Esq.
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9 Thurber Blvd. Suite D
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RE: Site Investigation Report – Follow-up from 2/22/24 meeting
Rhode Island Recycled Metals, LLC
434 Allen’s Avenue, Providence, R.I.
Plat 47, Lot 601
Plat 55, Lot 10

Dear Attorney Nicholson:

This letter is in follow-up to the meeting held on February 22, 2024, between the Rhode Island Department of Environmental Management (the Department) and Rhode Island Recycled Metals, LLC (RIRM).

As previously required in its letter of December 27, 2023 and reiterated in its letter of February 2, 2024, the Department’s Office of Land Revitalization and Sustainable Materials Management (LRSMM) insists that RIRM submit TCLP analysis performed on the four (4) soil samples containing the highest concentrations of total lead (B1-S2, B7-S1, SS-9 and SS-10) along with a TCLP analysis for the indicated metals in three (3) soil samples: B3-S2 (Mercury), B4-S1 (Selenium), and B7-S1

(Chromium). The deadline to submit results of these tests is hereby extended from the previous deadline of February 21, 2024, to **March 11, 2024.**

As previously stated in the December 27, 2023, letter, and reiterated in the February 2, 2024, letter, “a permanent impermeable cap with a storm water treatment/collection system that meets all applicable Federal and State Rules and Regulations is warranted.” After further consideration on the issue of “prior removal and disposal of the two soil piles,” LRSMM agrees that on-site management of the soil piles can be allowed, provided the soil pile materials are covered by a LRSMM-approved impermeable cap.

This letter also confirms the discussion at the meeting regarding the implications of the TCLP analyses results. The Department considers the data resulting from the TCLP analyses as integral to the overall understanding of the risks that certain site soils may pose to humans operating at the site and to the surrounding environment. This data will be used to inform the type of encapsulation that may be necessary, the soil management protocols and precautions that must be in place during and after site construction, and if disturbance of certain soils would require strict compliance with additional rules under the Resource Conservation and Recovery Act (RCRA). In accordance with 40 CFR § 261.24, Table 1, using the Toxicity Characteristic Leaching Procedure, test Method 1311, the resulting concentrations at which the relevant contaminants cause a waste to be considered Hazardous are as follows:

EPA HW No.	Contaminant	CAS No.	Regulatory Level (mg/L)
D007	Chromium	7440-47-3	5.0
D008	Lead	7439-92-1	5.0
D009	Mercury	7439-97-6	0.2
D010	Selenium	7782-49-2	1.0

In the event that one or more of the TCLP analyses results in an exceedance of its respective hazardous waste regulatory level, please be aware that it would not necessitate the excavation of impacted soils. Instead, it would require the prevention of stormwater infiltration through the affected soils through an impermeable engineered barrier and the recording of an institutional control that includes a detailed soil management plan. The requirements associated with the management of hazardous waste under RCRA is not triggered until the material (soil containing the toxic characteristic) is “generated,” or removed from the ground. However, the U.S. Environmental Protection Agency’s (EPA) Area of Contamination (AOC) Policy¹, as clarified March 25, 1996, allows for the “*movement of media contaminated with hazardous wastes within in area of contamination*” without triggering RCRA requirements. In other words, the Department can consider a Remedial Action Work Plan (RAWP) that proposes to relocate these soils within a defined AOC, on-site and under a Department-approved cap, in order to facilitate remedial and/or redevelopment plans.

Sincerely,

/s/ Jenna Giguere, Esq.

¹ Environmental Protection Agency. (1996, March 25). *Area of Contamination Policy*. https://www.epa.gov/sites/default/files/2016-04/documents/02_01aoc.pdf