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STATE OF CALIFORNIA
DEPARTMENT OF RESOURCES RECYCLING AND RECOVERY

In the matter of:

Century Drill and Tool, LLC

RESPONDENT

**STIPULATION FOR THE ISSUANCE OF
ADMINISTRATIVE DECISION FOR THE
IMPOSITION OF RIGID PLASTIC
PACKAGING CONTAINER
ADMINISTRATIVE PENALTIES**

PUBLIC RESOURCES CODE

SECTION 42300, ET SEQ.

OAH NO: 2022120275

AGENCY NO: 2022-002-RPPC

INTRODUCTION AND PROCEDURAL HISTORY

This STIPULATION FOR THE ISSUANCE OF ADMINISTRATIVE DECISION FOR THE IMPOSITION OF RIGID PLASTIC PACKAGING CONTAINER ADMINISTRATIVE PENALTIES (hereinafter “Stipulation”) is entered into by the Parties, California Department of Resources Recycling and Recovery (CALRECYCLE) and Century Drill and Tool, LLC (CENTURY). CENTURY was selected to demonstrate compliance under the Rigid Plastic Packaging Container (RPPC) Program, by providing RPPC Compliance Certification (Compliance Certification or Certification) for the 2019 Measurement Period. Following receipt of CENTURY’s submission, staff

determined that CENTURY was noncompliant and potentially subject to penalties for violations of Public Resources Code (PRC) sections 42300 through 42345 and Title 14 of the California Code of Regulations (CCR) sections 17944(a) and 17945.2. CALRECYCLE sent a Notice of Violation, and subsequently, served an Accusation, on or about May 24, 2022. CENTURY is seeking to settle its violations, without adjudication via the administrative hearing process. This Stipulation resolves all issues raised regarding the alleged noncompliant 2019 RPPC Compliance Certification, in exchange for CENTURY paying a Penalty of Twenty-Five Thousand Dollars (\$25,000.00) payable within 30 calendar days of execution of this Stipulation and Penalty in Abeyance of Seventy-Five Thousand Dollars (\$75,000.00), and agreeing to recertify during the 2025 RPPC Compliance Certification Measurement Period, as described below.

STIPULATED STATUTORY AND REGULATORY AUTHORITY

1. PRC section 42300 et seq. and CCR section 17943 et seq. provides the supporting authority for this Stipulation.
2. PRC section 42301 and CCR section 17943 provide definitions that directly apply to the implementation and enforcement of the law. Key definitions used within this Stipulation include the following:
 - a. PRC section 42301(e), states a “Manufacturer” is defined as, “the producer or generator of a product that is sold or offered for sale in the state and that is stored inside of a rigid plastic packaging container.”
 - b. CCR section 17943(k) states a “Measurement Period” “means the calendar year for which compliance is being determined as part of the certification or auditing process described in sections 17945.1, 17945.2, 17945.3, 17945.5, 17947, and 17948.1 of this Article. For products introduced for sale in California after January 1 of a measurement period, their first measurement period shall be the remainder of that calendar year.”
 - c. PRC section 42301(g), states “‘Postconsumer material’ means a material that would otherwise be destined for solid waste disposal, having completed its

intended end use and product lifecycle. Postconsumer material does not include materials and byproducts generated from, and commonly reused within, an original manufacturing and fabrication process.”

- d. PRC section 42301(f), states a “Rigid plastic packaging container” is defined as, “any plastic package having a relatively inflexible finite shape or form, with a minimum capacity of eight fluid ounces or its equivalent volume and a maximum capacity of five fluid gallons or its equivalent volume, that is capable of maintaining its shape while holding other products, including, but not limited to, bottles, cartons, and other receptacles, for sale or distribution in the state.”
 - e. CCR section 17943(ae) states “Sold or Offered for Sale” “means direct sales, retail sales, and remote sales such as through distributors, wholesalers and the internet.”
3. PRC section 42310, states that “Except as otherwise provided in this chapter, every rigid plastic packaging container sold or offered for sale in this state shall, on average, meet one of the following criteria:
- (a) Be made from 25 percent postconsumer material.
 - (b) Have a recycling rate of 45 percent if it is a product-associated rigid plastic packaging container or a single resin type of rigid plastic packaging container, as demonstrated to the board by the product maker, container manufacturer, or other entity. The board may take appropriate action to verify the demonstration, but the board is not required to expend state funds to conduct a survey or calculate the rate.
 - (c) Be a reusable package or a refillable package.
 - (d) Be a source reduced container.
 - (e) Is a container containing floral preservative that is subsequently reused by the floral industry for at least two years.”
4. Additionally, PRC section 42310.3 provides manufacturers an alternative compliance option. A manufacturer can demonstrate compliance if the manufacturer consumed

postconsumer material generated in the state in the manufacturer of a RPPC or other plastic products or plastic packaging. This criteria and requirements for meeting this alternative compliance option are outlined in the RPPC regulations (CCR section 17945.3(e)).

5. Pursuant to PRC section 42325, CALRECYCLE has authority to adopt regulations which include but are not limited to procedures for product manufacturers to certify compliance. The regulations require a submittal of a compliance certification. Within the certification, the product manufacturer claims that the RPPCs holding their products meet one of the compliance criteria, identified above, or meet the alternative compliance option, and reports specific container data and supporting information for the compliance option claimed.

6. CCR section 17945.2 requires the following during compliance certification;

“(a) Product manufacturers, upon written notification from CALRECYCLE, are required to certify to CALRECYCLE that all of the rigid plastic packaging containers holding their products sold or offered for sale in California comply with the rigid plastic packaging container requirements, pursuant to Public Resources Code Section 42310 or 42310.3. Product manufacturers shall submit the information described in Section 17945.3 in their certifications.

(b) Container manufacturers’ certifications provided to product manufacturers shall include the information described in Section 17945.4.

(c) A product manufacturer’s completed certification, including any applicable container manufacturer certifications, must be postmarked or sent electronically no later than April 1 of the calendar year immediately following the measurement period.

(d) Prior to the end of the measurement period, a product manufacturer may request an extension for submittal of its certification of up to 30 calendar days for cause. An extension may be granted by CALRECYCLE only if the product manufacturer provides documentary evidence to justify an extension based on

criteria such as corporate acquisitions, corporate reorganizations, difficulty obtaining container information, or catastrophic acts of God, or other criteria deemed acceptable upon CALRECYCLE's evaluation.

(e) If CALRECYCLE receives a certification that, upon review, does not include all of the information required by this Article, CALRECYCLE will notify the product manufacturer and state what additional information or documentation is required. The product manufacturer will then have 30 calendar days after receipt of the notice to provide the required information or documentation. One 30-calendar day extension may be granted for cause by CALRECYCLE upon request.

(f) At any time, CALRECYCLE may request information from a product manufacturer outside of any notice of incomplete certification. In such cases, CALRECYCLE shall mail a written request, and the product manufacturer shall have 60 calendar days following the date of receipt of the request to supply the information.”

7. CCR section 17945.3(a) requires that a product manufacturer include in its certification the information listed in subsections (b) through (d), and if applicable, subsection (e).
 - a. CCR section 17945.3(b) requires information necessary to identify and contact the product manufacturer, a statement regarding whether products were sold in California along with whether products were approved for a waiver or qualified for statutory exemptions, and a requirement that all corporate entities providing certification must identify the individual submitting the certification and be signed under the following statement, “I certify under penalty of perjury under the laws of the State of California that to the best of my knowledge and belief the foregoing information and all supporting data provided is accurate, true and complete.”
 - b. CCR section 17945.3(c) requires the product manufacturer to provide detail about products sold in RPPCs, including specific details regarding the physical characteristics of the packaging containers and sales data.

- c. In addition to data reporting requirements in this section, CCR section 17945.3(d) requires that manufacturers identify their chosen method of compliance (options previously noted under PRC sections 42310, 42310.3 and CCR sections 17944 and 17944.1) and submit information specific to the container compliance option(s) claimed.
8. CCR section 17945.4(a) requires that container manufacturers provide, to the product manufacturer, information including contact information for the entity that manufactured the packaging in addition to information regarding the type of container (jar, bottle, clamshell, etc.) weight, percentage of postconsumer content, and/or any reduction in the RPPC weight. Subsection (b) requires this information to be submitted under penalty of perjury.
9. CCR section 17945.5(a) requires that a product manufacturer use the compliance option formulas listed in subsections (b) through (f) to calculate its claim of compliance.
10. Pursuant to PRC section 42322 and CCR section 17949, CALRECYCLE is authorized to impose fines and penalties on manufacturers who violate any provision of the RPPC law.
11. CCR section 17949(e) states, “When product manufacturers do not comply with the rigid plastic packaging container requirements in Sections 17945.3 and 17945.5 ... CALRECYCLE will calculate penalties using the data from the approved compliance certifications and the following formulas” (penalty formulas as listed in 1 through 5 of CCR section 17949(e)).
12. Pursuant to PRC section 42322 and CCR section 17949, CALRECYCLE has authority to impose fifty thousand dollars (\$50,000) penalty for each violation; total annual fines and penalties assessed cannot exceed one hundred thousand dollars (\$100,000), on a manufacturer who violates provisions of the RPPC law within a calendar year.

GROUNDS FOR ADMINISTRATIVE ACTION

13. Pursuant to PRC section 42322 and CCR section 17949, CALRECYCLE is authorized to impose fines and civil penalties on manufacturers who violate any provision of the RPPC law, up to a maximum of One Hundred Thousand Dollars (\$100,000.00).

ALLEGED VIOLATIONS AND BASIS FOR SETTLEMENT

14. During the relevant Compliance Certification measurement period, from calendar year January 1, 2019, through December 31, 2019, Respondent was a product manufacturer who was selling products packaged within RPPCs in California, as indicated above.
15. Respondent was selected for Pre-Certification, and was sent a *2018 Pre-Certification Notice* on or about January 26, 2018. Respondent provided the information required in its January 30, 2018 response.
16. On March 26, 2019, CalRecycle sent Respondent a *2019 Compliance Certification Notice* via USPS certified mail. The certified mail return receipt was signed by Lisa Broetzman and dated March 29, 2019.
17. Respondent submitted a 2019 Compliance Certification on March 11, 2020. Respondent failed to submit a complete Compliance Certification because it did not include the following necessary elements:
- a. A statement of compliance (CCR section 17945.3(b)(2))
 - b. Complete container information (CCR section 17945.3(c))
 - c. Container manufacturer certifications (CCR section 17945.3(c)(7)).
 - d. Container compliance calculations (CCR section 17945.3(d)(2)(B)).
18. CalRecycle sent a *Notice of Incomplete 2019 Compliance Certification Submission* (“*Notice of Incomplete*”) letter to Respondent on July 24, 2020. CalRecycle provided Respondent 30 days to submit the required information.
19. In response to the *Notice of Incomplete*, Respondent submitted a revised 2019 Compliance Certification via email on September 1, 2020, after the 30-calendar-day due date. This

submission included a cover letter, and a CalRecycle model template with a signed signatory page and three product and container data tables.

- a. Respondent reported the use of PCM for two container lines during the measurement period.
- b. Respondent reported Source Reduction by Reduced Container Weight, occurring after the 2019 measurement period (changes reportedly occurred in 2020) for 32 container lines; no compliance information for 2019 was reported for the products sold in these container lines.
- c. For all containers, reported calculated compliance rates could not be verified by the Department since no container manufacturer certifications were provided for any container lines.

20. In a follow up call between the Department and Respondent, Darrin Purcell told CalRecycle staff that they would not be able to provide the missing container manufacturer certification information.

21. On June 30, 2022, Respondent submitted a revised 2019 Compliance Certification via email. This submission included a product manufacturer certification with product packaging data and photos of 34 product lines, and a container manufacturer certification using part of a CalRecycle model template.

- a. Respondent reported the use of PCM for four container lines, occurring after the 2019 measurement period (changes reportedly occurred in 2020 or 2021, based on conflicting information reported in the product manufacturer and container manufacturer certifications).
- b. Respondent reported Source Reduction by Reduced Container Weight, occurring after the 2019 measurement period (changes reportedly occurred in 2020) for 30 container lines; no compliance information for 2019 was reported for the products sold in these container lines.

- c. For all containers, reported calculated compliance rates could not be verified by the Department since container manufacturer certifications were either incomplete or not provided for any container lines.
22. Based on the email and verbal communications, and the self-certified data from Respondent, Department staff found that the Respondent failed to meet any compliance option(s) for the products held within RPPCs during the 2019 measurement period.

VIOLATIONS

Violation 1: Incomplete Compliance Certification Submission

23. As previously noted, Respondents certification submittal was incomplete.
24. Century Drill & Tool's subsequent compliance certifications also did not include all of the required elements:
- a. Complete container manufacturer certifications.
 - b. For 34 container lines, any evidence of Source Reduction (or other compliance option) during the 2019 measurement period.

Violation 2: Container Noncompliance

25. Respondent's certification did not demonstrate compliance with the law (e.g. RPPCs reported in the self-certification did not have container manufacturer certifications to demonstrate that they were made with 25 percent postconsumer material, were not source reduced during the 2019 compliance measurement period, and did not meet any of the other compliance options (PRC section 42310(a) through (e)).

STIPULATED PENALTY AND SETTLEMENT TERMS

26. CENTURY stipulates to paying a Penalty of Twenty-Five Thousand Dollars (\$25,000.00) payable within 30 calendar days of execution of this Stipulation, a Penalty in Abeyance of Seventy-Five Thousand Dollars (\$75,000.00), and agreeing to recertify during the 2025 Compliance Certification Measurement Period. Payments shall be satisfied in the following manner;

(a) All payments shall be made and mailed to Department of Resources Recycling and Recovery (CALRECYCLE), Fiscal Services Branch, at 1001 I Street, PO Box 4025, MS 19A, Sacramento, CA 95812-4025, by certified mail. CENTURY will maintain the receipt as evidence of compliance.

i. If any payment from CENTURY is not mailed to CALRECYCLE by the due date, CENTURY shall be found in full Default.

Initial Penalty Payment

(b) CENTURY shall make an initial payment for penalties in the amount Twenty-Five Thousand Dollars (\$25,000.00) within thirty (30) calendar days of execution of this Stipulation.

(c) CENTURY fails to pay the Twenty-Five Thousand Dollars (\$25,000.00) due within thirty (30) calendar days of the execution of this Stipulation, CALRECYCLE will follow the Default procedures described below.

(i) If CENTURY does not make its payment within thirty (30) days, CENTURY will exclusively be held in default and assumes liability for all monetary penalties including the abeyance amount Seventy-Five Thousand Dollars (\$75,000.00) under this Stipulation, immediately due as described above; CENTURY will continue to be obligated to demonstrate compliance per the 2025 Compliance Certification elements of this stipulation.

2025 Compliance Certification

(d) CENTURY agrees to participate in the 2025 Compliance Certification. Upon notification by CALRECYCLE, CENTURY shall follow CALRECYCLE's instructions regarding submittal of the 2025 Compliance Certification, as set forth in PRC section 42300 et seq. and CCR section 17945.2 et seq., and demonstrate that CENTURY's products individually or collectively meet one of the compliance options described under the law. Failure to demonstrate compliance with the requirements in the program's statutes and regulations will result in payment of the Penalty in Abeyance, as described in the following subsection of this agreement.

Penalty in Abeyance

(e) CENTURY agrees to be liable for Seventy-Five Thousand Dollars (\$75,000.00), which shall be stayed and held in abeyance until January 1, 2027, or CALRECYCLE issues a Notice of Default or Notice of Violation for CENTURY's 2025 Compliance Certification, prior to January 1, 2027;

(i) If CENTURY fails to submit a 2025 Compliance Certification, the Default procedures will result, as described below, and CALRECYCLE will demand payment of all of the penalty held in abeyance.

(ii) If CENTURY fails to notify CALRECYCLE regarding changes to contact information, CALRECYCLE may issue a finding of Default, and CALRECYCLE may demand payment of some, or all, of the Penalty in Abeyance.

(iii) If CENTURY submits a 2025 Compliance Certification and is found noncompliant, CENTURY will pay the full Penalty in Abeyance upon receipt of a Notice of Default from CALRECYCLE prior to January 1, 2027.

(iv) Otherwise, the stayed penalty held in abeyance shall be deemed terminated on January 1, 2027 and shall not be paid by CENTURY to CALRECYCLE unless CALRECYCLE previously issued a Notice of Default as described below.

(g) CENTURY is designating Kurt Tachick, who can be reached via email at ktachick@centurydrill.com, or by telephone at 920-347-5744, to be the single point of contact for CALRECYCLE through January 1, 2027. The point of contact shall be responsible for all communications with CALRECYCLE in regard to implementing the RPPC law, including but not limited to technical assistance, pre-certification notifications and responses, compliance certification, and discussion and questions regarding what qualifies as an RPPC. The point of contact shall respond to CALRECYCLE's requests for information in compliance with this Stipulation, their Pre-Certification or Certification and the RPPC law within fifteen (15) business days

of any request for information or clarification by CALRECYCLE. If the above point of contact or that individual's information changes, CENTURY shall notify CALRECYCLE within twenty (20) business days of the change.

27. With respect to any Notice of Default regarding CENTURY's failure to maintain an accurate single point of contact, CENTURY shall have twenty (20) business days from the date of the issuance of the Notice of Default to cure that default, by providing that information to CALRECYCLE via certified mail communication.

Default

28. If CALRECYCLE believes that CENTURY has defaulted under any of the terms of this Stipulation, CALRECYCLE shall send a Notice of Default to CENTURY; said Notice of Default shall state the paragraphs or provisions of the Stipulation of which CENTURY is believed to be in default.
29. After issuing a Notice of Default and reviewing any evidence or information provided by CENTURY, CALRECYCLE shall issue a Supplemental Decision with its determination as to whether there has been a Default by CENTURY and if so, the penalty which is due.

Miscellaneous

30. If CENTURY fails to demonstrate compliance in the 2025 Compliance Certification Measurement Period or is found to be in violation of PRC section 42300 et seq. or CCR section 17945.2 et seq., CALRECYCLE reserves the authority to pursue the Seventy-Five Thousand Dollars (\$75,000.00) administrative penalty held in abeyance as well as a separate enforcement action against CENTURY, following the process described in statute and regulations, not limited in any manner by this Stipulation.
31. Attorney's Fees and Costs: Except as otherwise provided herein, each party shall bear all attorneys' fees and costs arising from each Party's own counsel in connection with the matters set forth herein.
32. Interpretation: This Stipulation and Order shall be construed as if the Parties prepared it jointly. Any uncertainty or ambiguity shall not be interpreted against any one Party. The Parties are represented by counsel in this matter.

33. Waiver of Right to Administrative Hearing: CENTURY acknowledges that it understands that it is entitled to an Administrative Hearing on the merits of this matter, pursuant to PRC section 42322 and Government Code section 11506 and has procedural rights under Government Code sections 11507.5, 11507.6, and 11507.7, and is voluntarily waiving these rights and the right to contest this matter in an Administrative Hearing as part of this Settlement.

34. Waiver of Right to Petition or Appeal: The Parties hereby waive their rights, if any, to petition for writ of administrative mandate in the California Superior Court or to appeal to a California Superior Court and/or any California appellate level court.

Dated: _____

Rachel Machi Wagoner
Director
Department of Resources Recycling and
Recovery (CalRecycle)

Dated: _____

Kurt Tachick
President
Century Drill and Tool, LLC