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U.S. EPA, REGION IX  
REGIONAL HEARING CLERK

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION IX  
75 HAWTHORNE STREET  
SAN FRANCISCO, CA 94105

In the Matter of:	)	
	)	Docket No. CAA-09-2011- <u>0002</u>
Concorde Battery Corporation and	)	
Interspace Battery, Inc.,	)	
	)	CONSENT AGREEMENT AND FINAL
Respondents.	)	ORDER PURSUANT TO 40 C.F.R.
_____	)	§§ 22.13 and 22.18

**I. CONSENT AGREEMENT**

The United States Environmental Protection Agency, Region IX ("EPA"), Concorde Battery Corporation and Interspace Battery, Inc. ("Respondents") agree to settle this matter and consent to the entry of this Consent Agreement and Final Order ("CAFO"), which simultaneously commences and concludes this matter in accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b).

**A. AUTHORITY AND PARTIES**

1. This is a civil administrative penalty action instituted against Respondents pursuant to Section 113(d) of the Clean Air Act ("CAA" or the "Act"), 42 U.S.C. § 7413(d), for violations of Section 112 of the Act, 42 U.S.C. § 7412 and its implementing federal regulations at 40 C.F.R. Part 63, Subpart P § 63.11421-11427.

2. Complainant is the Director of the Air Division, EPA, Region IX, who has been duly delegated from the Administrator of EPA ("Administrator") the authority to initiate this action and to sign a consent agreement settling this action.

3. Respondents are two separate California companies operating a continuous-flow battery manufacturing operation at the same facility, located at 2009 W. San Bernardino Road, West Covina, California, within the jurisdiction of the South Coast Air Quality Management District ("District").

## **B. APPLICABLE STATUTORY AND REGULATORY SECTIONS**

4. Pursuant to authority under Section 112 of the Act, 42 U.S.C. § 7412(d), the Administrator of EPA has promulgated the National Emission Standards for Hazardous Air Pollutants for Lead Acid Battery Manufacturing Area Sources (“Lead Acid Battery NESHAP”) at 40 C.F.R. Part 63, Subpart P, §§ 63.11421 – 63.11427.

5. The Lead Acid Battery NESHAP applies to each new or existing lead acid battery manufacturing plant, including any lead-emitting operation that is associated with the lead acid battery manufacturing plant. 40 C.F.R. §§ 63.11421(a), (b).

6. A person's failure to comply with NESHAP requirements is subject to enforcement under Section 113 of the Act. 42 U.S.C. § 7413(a)(3).

7. The definition of “person” under Section 302(e) of the Act includes individuals, corporations, partnerships and associations. 42 U.S.C. § 7602(e).

8. An existing lead acid battery manufacturing plant is one that commenced construction on or before April 4, 2007. 40 C.F.R. § 63.11421(b)(1).

9. Under the Lead Acid Battery NESHAP, existing lead acid battery manufacturing plants must submit an initial notification by November 13, 2007. 40 C.F.R. § 63.11425(b).

10. Furthermore, existing lead acid battery manufacturing plants must submit an initial notification of compliance by March 13, 2009. 40 C.F.R. § 63.11425(c).

11. Additionally, the owner or operator of a lead acid battery manufacturing plant must submit monitoring system performance reports in accordance with 40 C.F.R. §§ 63.11423(b)(2)(ii), (iv)(A).

12. Finally, the owner or operator of an existing lead acid battery manufacturing plant is required to conduct a performance test by January 12, 2009, meeting the testing requirements in 40 C.F.R. § 60.374. See 40 C.F.R. § 63.11423(c).

13. “Owner or operator” means any person who owns, leases, operates, controls, or supervises a stationary source. 40 C.F.R. § 63.2.

## **C. ALLEGATIONS**

### **GENERAL ALLEGATIONS**

14. Respondents are persons as that term is defined in Section 302(e) of the Act, 42 U.S.C. § 7602(e).

15. At all times relevant to this CAFO, Respondents owned and operated a battery manufacturing facility located at 2009 W. San Bernardino Road, West Covina, California (the "Facility").

16. Since approximately 1976, the Facility has been operated as a lead acid battery manufacturing plant.

17. Accordingly, Respondents are subject to the Lead Acid Battery NESHAP because they own or operate a lead acid battery manufacturing plant.

18. The Facility is an "existing source" as that term is defined under 40 C.F.R. § 63.11421(b)(1) because it commenced construction before April 4, 2007.

#### **COUNT 1: FAILURE TO SUBMIT INITIAL NOTIFICATION REPORT**

19. Respondents failed to submit an initial notification report by November 13, 2007, violating 40 C.F.R. § 63.11425(b).

#### **COUNT 2: FAILURE TO SUBMIT AN INITIAL NOTIFICATION OF COMPLIANCE REPORT**

20. Respondents failed to submit an initial notification of compliance report by March 13, 2009, violating 40 C.F.R. § 63.11425(c).

#### **COUNT 3: FAILURE TO SUBMIT SEMIANNUAL MONITORING SYSTEM PERFORMANCE REPORTS**

21. Respondents failed to submit three semiannual monitoring system performance reports, violating 40 C.F.R. §§ 63.11423(b)(2)(ii), (iv)(A).

#### **COUNT 4: FAILURE TO COMPLETE PERFORMANCE TESTS ON LEAD EMISSIONS SOURCES BY JANUARY 12, 2009**

22. Respondents failed to meet the testing requirements in 40 C.F.R. 60.374 by the January 12, 2009 deadline, violating 40 C.F.R. § 63.11423(c)(2).

23. Respondents conducted performance tests in February and May 2011, meeting the standards referenced in 40 C.F.R. § 63.11423(c) and have additionally submitted semiannual

reports since March 2010, meeting the reporting requirements under 40 C.F.R. § 63.11423(b).

#### **D. RESPONDENTS' ADMISSIONS**

24. In accordance with 40 C.F.R. § 22.18(b)(2) and for the purpose of this proceeding, Respondents (i) admit that EPA has jurisdiction over the subject matter of this CAFO and over Respondents; (ii) neither admit nor deny the specific factual allegations contained in Section I.C. of this CAFO; (iii) consent to any and all conditions specified in this CAFO and to the assessment of the civil administrative penalty under Section I.E. of this CAFO; (iv) waive any right to contest the allegations contained in Section I.C. of this CAFO; and (v) waive the right to appeal the proposed final order contained in this CAFO.

#### **E. CIVIL ADMINISTRATIVE PENALTY**

25. Respondents agree to the assessment of a penalty in the amount of NINETY-EIGHT THOUSAND FIVE HUNDRED DOLLARS (\$98,500) as final settlement of the civil claims against Respondents arising under the Act as alleged in Section I.C. of this CAFO.

26. Respondents shall pay the assessed penalty no later than thirty (30) days from the effective date of this CAFO. The civil penalty shall be paid by remitting a certified or cashier's check, including the name and docket number of this case, for the amount, payable to "Treasurer, United States of America," (or be paid by one of the other methods listed below) and sent as follows:

##### Regular Mail:

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

##### Wire Transfers:

Wire transfers must be sent directly to the Federal Reserve Bank in New York City with the following information:  
Federal Reserve Bank of New York  
ABA = 021030004  
Account = 68010727  
SWIFT address = FRNYUS33  
33 Liberty Street  
New York, NY 10045  
Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency"

Overnight Mail:

U.S. Bank  
1005 Convention Plaza  
Mail Station SL-MO-C2GL  
ATTN Box 979077  
St. Louis, MO 63101

ACH (also known as REX or remittance express):

Automated Clearinghouse (ACH) for receiving US currency  
PNC Bank  
808 17th Street, NW  
Washington, DC 20074  
ABA = 051036706  
Transaction Code 22 - checking  
Environmental Protection Agency  
Account 31006  
CTX Format

On Line Payment:

This payment option can be accessed from the information below:

[www.pay.gov](http://www.pay.gov)

Enter "sfo1.1" in the search field

Open form and complete required fields

If clarification regarding a particular method of payment remittance is needed, contact the EPA Cincinnati Finance Center at 513-487-2091.

A copy of each check, or notification that the payment has been made by one of the other methods listed above, including proof of the date payment was made, shall be sent with a transmittal letter, indicating Respondents' names, the case title, and docket number, to both:

- a) Regional Hearing Clerk  
Office of Regional Counsel (ORC-1)  
U.S. Environmental Protection Agency, Region 9  
75 Hawthorne Street  
San Francisco, California 94105
- b) Chief, Air Enforcement Office  
Air Division (AIR-5)  
U.S. Environmental Protection Agency, Region IX  
75 Hawthorne Street  
San Francisco, CA 94105

27. Payment of the above civil administrative penalty shall not be used by Respondents or any other person as a tax deduction from Respondents' federal, state, or local taxes.

28. If Respondents fail to pay the assessed civil administrative penalty specified in Paragraph 25 by the deadline specified in Paragraph 26, then Respondents shall pay to EPA the stipulated penalty of \$500 for each day the penalty is late, which shall become due and payable upon EPA's written request. Such failure by Respondents may also subject Respondents to a civil action to collect any unpaid portion of the assessed penalty, together with interest, handling charges, and nonpayment penalties as set forth in Paragraph 29 below. In any such collection action, the validity, amount, and appropriateness of this CAFO or the penalty assessed hereunder are not subject to review.

29. Pursuant to 42 U.S.C. § 7413(d)(5) and 31 U.S.C. § 3717, Respondents shall pay the following amounts:

a. Interest: Any unpaid portion of the assessed penalty shall bear interest at the rate established pursuant to 26 U.S.C. § 6621(a)(2) from the effective date of this CAFO, provided, however, that no interest shall be payable on any portion of the assessed penalty that is paid within thirty (30) days of the effective date of this CAFO.

b. Handling Charge: Pursuant to 31 U.S.C. § 3717(e)(1), a monthly handling charge of \$15 shall be paid for any month in which any portion of the assessed penalties is more than 30 days past due.

c. Attorney Fees, Collection Costs, Nonpayment Penalty: Pursuant to 42 U.S.C. § 7413(d)(5), if Respondents fail to pay on a timely basis the full amount of the assessed penalty, interest, and handling charges, they shall be liable for the United States' enforcement and collection expenses, including, but not limited to, attorney fees and costs incurred by the United States for collection proceedings, and a quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment penalty shall be ten percent (10%) of the aggregate amount of Respondents' outstanding or overdue penalties and nonpayment penalties accrued from the beginning of such quarter.

#### **F. RETENTION OF RIGHTS**

30. In accordance with 40 C.F.R. § 22.18(c), this CAFO only resolves Respondents' liability for federal civil penalties for the violations and facts specifically alleged in Section I.C. of this CAFO. Nothing in this CAFO is intended to or shall be construed to resolve (i) any civil liability for violations of any provision of any federal, state, or local law, statute, regulation, rule, ordinance, or permit not specifically alleged in Section I.C. of this CAFO; or (ii) any criminal liability. EPA specifically reserves any and all authorities, rights, and remedies available to it (including, but not limited to, injunctive or other equitable relief or criminal sanctions) to address any violation of this CAFO or any violation not specifically alleged in Section I.C. of this CAFO.

31. This CAFO does not exempt, relieve, modify, or affect in any way Respondents' duty to comply with all applicable federal, state, and local laws, regulations, rules, ordinances, and permits.

#### **G. ATTORNEYS' FEES AND COSTS**

32. Except as set forth in Paragraph 29(c) above, each party shall bear its own attorneys' fees, costs, and disbursements incurred in this proceeding.

#### **H. EFFECTIVE DATE**

33. In accordance with 40 C.F.R. §§ 22.18(b)(3) and 22.31(b), this CAFO shall be effective on the date that the final order contained in this CAFO, having been approved and issued by the Regional Judicial Officer, is filed.

#### **I. BINDING EFFECT**

34. The undersigned representative of Complainant and the undersigned representative of Respondents each certifies that he or she is fully authorized to enter into the terms and conditions of this CAFO and to bind the party he or she represents to this CAFO.

35. The provisions of this CAFO shall apply to and be binding upon Respondents and its officers, directors, employees, agents, trustees, servants, authorized representatives, successors, and assigns.

36. This Consent Agreement constitutes the entire agreement between the parties resolving this matter arising under the CAA.

37. This document constitutes an "enforcement response" as that term is used in EPA's Penalty Policy for the purposes of determining Respondents' "full compliance history" as provided in Section 113(e) of the Act, 42 U.S.C. § 7413(e).

**FOR RESPONDENTS, CONCORDE BATTERY CORPORATION AND INTERSPACE BATTERY, INC.:**

Date: 7/15/11 By:   
Ross Gardiner  
President and COO  
CONCORDE BATTERY CORPORATION

Date: 7-14-11 By:   
Scott Hollett  
President  
INTERSPACE BATTERY, INC.

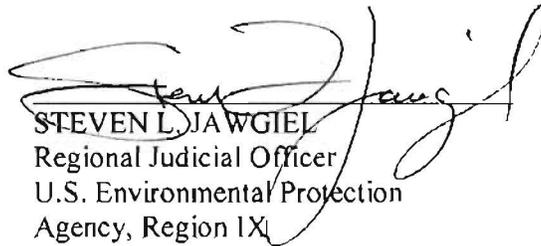
**FOR COMPLAINANT, EPA REGION IX:**

Date: 9/19/11 By:   
Deborah Jordan  
Director, Air Division  
U.S. ENVIRONMENTAL PROTECTION  
AGENCY, REGION IX

**II. FINAL ORDER**

Complainant and Respondents, having entered into the foregoing Consent Agreement, IT IS HEREBY ORDERED that this CAFO (Docket No. CAA-09-2011-0502) be entered, and that Respondents shall pay a civil administrative penalty in the amount of NINETY-EIGHT THOUSAND FIVE HUNDRED DOLLARS (\$98,500) and comply with the terms and conditions set forth in the Consent Agreement.

09/23/11  
DATE

  
STEVEN L. JAWGIEL  
Regional Judicial Officer  
U.S. Environmental Protection  
Agency, Region IX

**CERTIFICATE OF SERVICE**

I certify that the original of the foregoing Consent Agreement and Final Order was hand delivered to the Regional Hearing Clerk, United States Environmental Protection Agency – Region 9, 75 Hawthorne Street, San Francisco, California 94105, and that a true and correct copy of the Consent Agreement and Final Order was placed in the United States Mail, certified mail, return receipt requested, addressed as follows:

Steve O’Neil  
Sheppard Mullin Richter & Hampton LLP  
333 South Hope Street  
43rd Floor  
Los Angeles, CA 90071-1422

Certified Mail Number: 7010 3090 0001 2472 5209

Additional copies were placed in the United States Mail, addressed as follows:

Scott Hollett  
President  
Interspace Battery, Inc.  
2009 W. San Bernardino Road  
West Covina, CA 91790

Ross Gardiner  
President and COO  
Concorde Battery Corporation  
2009 W. San Bernardino Road  
West Covina, CA 91790

In addition, a copy was hand delivered to:

Daniel Reich  
Office of Regional Counsel  
US Environmental Protection Agency  
75 Hawthorne Street  
San Francisco, CA 94105

Dated: 9/26/11

  
Bryan K. Goodwin  
Regional Hearing Clerk  
Office of Regional Counsel (ORC-1)  
US Environmental Protection Agency  
75 Hawthorne Street  
San Francisco, CA 94105



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION IX  
75 Hawthorne Street  
San Francisco, CA 94105

CERTIFIED MAIL # 7010 3090 0001 2472 5209  
RETURN RECEIPT REQUESTED

SEP 26 2011

Mr. Steve O'Neil  
Sheppard Mullin Richter & Hampton LLP  
333 South Hope Street  
43rd Floor  
Los Angeles, CA 90071-1422

RE: Concorde Battery Corporation & Interspace Battery, Inc.

Dear Mr. O'Neil:

Enclosed is your copy of the Consent Agreement and Final Order ("CAFO") filed pursuant to section 113(d) of the Clean Air Act, 42 U.S.C. §§ 7401-7671q. If you have any questions concerning the CAFO, please contact Daniel Reich in the Office of Regional Counsel at (415) 972-3911.

Sincerely,

A handwritten signature in black ink, appearing to read "Deborah Jordan".

Deborah Jordan  
Director, Air Division

Enclosure

cc: Mr. Ross Gardiner  
President and COO, Concorde Battery Corporation

Mr. Scott Hollett  
President, Interspace Battery, Inc.

Mr. Mohsen Nazemi (w/o enclosure)  
South Coast Air Quality Management District

Mr. James Ryden (w/o enclosure)  
California Air Resources Board