

Pollutants for Lead Acid Battery Manufacturing Area Sources (“Lead Acid Battery NESHAP”) at 40 C.F.R. Part 63, Subpart PPPPPP, §§ 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. Additionally, 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. The owner or operator of an existing lead acid battery manufacturing plant must perform semiannual inspection and maintenance to ensure proper performance of each fabric filter and must record the results of these inspections. 40 C.F.R. § 63.11423(b)(2).

12. Furthermore, the owner or operator of a lead acid battery manufacturing plant must submit monitoring system performance reports in accordance with 40 C.F.R. § 63.10(e)(3). See 40 C.F.R. §§ 63.11423(b)(2)(ii), (iv)(A).

13. 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).

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

15. Pursuant to Section 114(a)(1) of the Act, 42 U.S.C. § 7414(a)(1), the Administrator may request information she may reasonably require, from any person subject to the Lead Acid Battery NESHAP.

C. ALLEGATIONS

General Allegations

16. Respondent is a person as that term is defined in Section 302(e) of the Act, 42 U.S.C. § 7602(e).

17. At all times relevant to this CAFO, Respondent owned and operated a battery manufacturing plant located at 1675 Sampson Avenue, Corona, California (the "Facility").

18. Since approximately 1991, the Facility has been operated as a lead acid battery manufacturing plant.

19. Accordingly, Respondent is subject to the Lead Acid Battery NESHAP because Respondent owns or operates a lead acid battery manufacturing plant.

20. 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

21. Respondent 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

22. Respondent 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 Perform Work Practice Requirement

23. Respondent failed to perform semiannual inspection and maintenance to ensure proper performance of each fabric filter and failed to record the results of the inspections violating 40 C.F.R. § 63.11423(b)(2).

Count 4: Failure to Submit Semiannual Monitoring System Performance Reports

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

Count 5: Failure to Complete Performance Tests on Lead Emissions Sources

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

26. Respondent conducted performance tests in March 2012, meeting the standards referenced in 40 C.F.R. § 63.11423(c).

Count 6: Failure to Provide a Complete Response to a CAA Section 114 Information Request

27. Respondent provided an incomplete response to a February 5, 2010 information request issued pursuant to Section 114(a)(1) of the Act.

D. RESPONDENT'S ADMISSIONS

28. In accordance with 40 C.F.R. § 22.18(b)(2) and for the purpose of this proceeding, Respondent (i) admits that EPA has jurisdiction over the subject matter of this CAFO and over Respondent; (ii) neither admits nor denies the specific factual allegations contained in Section I.C. of this CAFO; (iii) consents 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) waives any right to contest the allegations contained in Section I.C. of this CAFO; and (v) waives the right to appeal the proposed final order contained in this CAFO.

E. CIVIL ADMINISTRATIVE PENALTY

29. Respondent agrees to the assessment of a penalty in the amount of ONE HUNDRED SIXTY-SEVEN THOUSAND, THREE HUNDRED DOLLARS (\$167,300) as final settlement of the civil claims against Respondent arising under the Act as alleged in Section I.C. of this CAFO.

30. Respondent shall pay the assessed penalty no later than thirty (30) days from the Effective Date (defined in Section I.H.) 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
Enter "sf01.1" 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 Respondent's name, 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

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

32. If Respondent fails to pay the assessed civil administrative penalty specified in Paragraph 29 by the deadline specified in Paragraph 30, then Respondent 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 Respondent may also subject Respondent 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 33 below. In any such collection action, the validity, amount, and appropriateness of this CAFO or the penalty assessed hereunder are not subject to review.

33. Pursuant to 42 U.S.C. § 7413(d)(5) and 31 U.S.C. § 3717, Respondent 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 Respondent fails 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 Respondent's outstanding or overdue penalties and nonpayment penalties accrued from the beginning of such quarter.

F. RETENTION OF RIGHTS

34. In accordance with 40 C.F.R. § 22.18(c), this CAFO only resolves Respondent's 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.

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

G. ATTORNEYS' FEES AND COSTS

36. Except as set forth in Paragraph 33(c) above, each party shall bear its own attorneys' fees, costs, and disbursements incurred in this proceeding.

H. EFFECTIVE DATE

37. 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

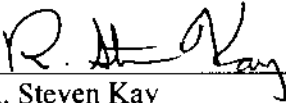
38. The undersigned representative of Complainant and the undersigned representative of Respondent each certifies that he or she is fully authorized to enter into the terms and conditions of this CAFO and to bind the party he or she represents to this CAFO.

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


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

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

FOR RESPONDENT, PALOS VERDES BUILDING CORP. D/B/A U.S. BATTERY MANUFACTURING CO.:

Date: 8/29/12 By: 
R. Steven Kay
Chief Financial Officer
U.S. BATTERY MANUFACTURING CO.

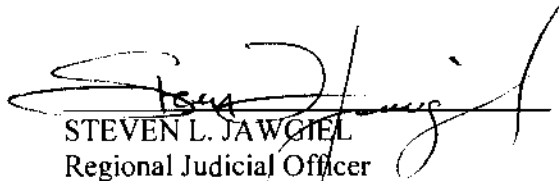
FOR COMPLAINANT, EPA REGION IX:

Date: 9/25/12 By: 
Deborah Jordan
Director, Air Division
U.S. ENVIRONMENTAL PROTECTION
AGENCY, REGION IX

II. FINAL ORDER

Complainant and Respondent, having entered into the foregoing Consent Agreement, IT IS HEREBY ORDERED that this CAFO (Docket No. CAA-09-2012-0001) be entered, and that Respondent shall pay a civil administrative penalty in the amount of ONE HUNDRED SIXTY-SEVEN THOUSAND, THREE HUNDRED DOLLARS (\$167,300) and comply with the terms and conditions set forth in the Consent Agreement.

09/27/12
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:

Curtis L. Coleman
Law Offices of Curtis L. Coleman
6601 Center Drive W, Suite 500
Los Angeles, CA 90045

Certified Mail Number: 7010 1870 0001 5596 6071

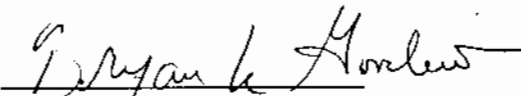
Additional copies were placed in the United States Mail, addressed as follows:

R. Steven Kay
Chief Financial Officer
U.S. Battery Manufacturing Co.
1675 Sampson Ave.
Corona, CA 92879

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: 9/28/12


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 94105-3901

CERTIFIED MAIL # 7010 1870 0001 5596 6071
RETURN RECEIPT REQUESTED

SEP 28 2012


Mr. Curtis Coleman
Law Offices of Curtis L. Coleman
6601 Center Drive W, Suite 500
Los Angeles, California 90045

RE: Palos Verdes Building Corp. d/b/a U.S. Battery Manufacturing Company

Dear Mr. Coleman:

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 Tunde Wang in the Air Division at (415) 972-3990 or Dan Reich in the Office of Regional Counsel at (415) 972-3911.

Sincerely,



Deborah Jordan
Director, Air Division

Enclosure

cc: Mr. Steven Kay
U.S. Battery Manufacturing Company

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

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