

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2**

In re:

Norlite, LLC,

Respondent

In a proceeding under
Section 113(d) of the Clean Air Act

**CONSENT AGREEMENT
AND
FINAL ORDER**

CAA-02-2020-1004

I. PRELIMINARY STATEMENT

1. Complainant, the Director of the Enforcement and Compliance Assurance Division (ECAD) for the United States Environmental Protection Agency (EPA) Region 2, filed the Complaint referenced herein on January 30, 2020 against Respondent, Norlite, LLC (Norlite or Respondent);
2. Complainant is delegated the authority to settle civil administrative penalty proceedings under Section 113(d)(2)(B) of the Clean Air Act;
3. The Regional Administrator of EPA Region 2 is authorized to ratify this settlement pursuant to 40 C.F.R. § 22.18(b); and
4. Complainant and Respondent have agreed that settlement of this matter is in the public interest, and that entry of this Consent Agreement and Final Order (CA/FO or Agreement) without further litigation is the most appropriate means of resolving this matter.
5. Now, therefore, before the taking of any testimony, upon the pleadings, without adjudication of any issue of fact or law, and upon consent and agreement of Complainant and Respondent, it is hereby Ordered as follows.

II. PROCEDURAL AND FACTUAL BACKGROUND

6. Complainant initiated this proceeding for the administrative assessment of a civil penalty, pursuant to Section 113(d) of the Clean Air Act (CAA or the Act), 42 U.S.C. § 7413(d).

7. The Complaint proposes that a civil penalty of \$326,278 be assessed against Respondent for its alleged failure to comply with the National Emission Standards for Hazardous Air Pollutants (NESHAP) general provisions set forth in 40 C.F.R. Part 63 Subpart A, and the NESHAP for Hazardous Air Pollutants from Hazardous Waste Combustors (HWC) set forth in 40 C.F.R. Part 63 Subpart EEE.

8. Respondent filed an Answer dated March 4, 2020 disputing the violations, asserting affirmative defenses, and requesting a hearing pursuant to 40 C.F.R. Part 22.

9. The Complaint and the Answer are hereby incorporated herein by reference.

III. TERMS OF SETTLEMENT

A. General Provisions

1. Respondent's performance of the terms of this CA/FO only resolves its liability to the United States for federal civil penalties for the violations specifically alleged in the Complaint.

2. Nothing in this CA/FO shall be construed as prohibiting, altering or in any way limiting the ability of the EPA to seek any other remedies or sanctions available by virtue of Respondent's violation(s) of this CA/FO or for Respondent's violation(s) of any other applicable provision of law or regulation, nor shall it be construed as limiting the defenses that Respondent may raise to any such alleged violation(s).

3. Nothing in this CA/FO shall relieve Respondent of the duty to comply with all applicable provisions of the Clean Air Act and any other environmental laws.

4. For the purposes of this proceeding, Respondent:

- a. admits the jurisdictional allegations contained in the Complaint;
- b. neither admits nor denies the specific factual allegations contained in the Complaint;
- c. consents to the assessment of a civil penalty, as described below;
- d. consents to the issuance of any specified compliance or corrective action order, as applicable;
- e. consents to any conditions specified in the Consent Agreement, as applicable;
- f. consents to any stated “permit action” (as that term is defined in 40 C.F.R. § 22.3(a)), as applicable;
- g. waives any right to contest any allegations contained in the Consent Agreement; and
- h. waives any right to appeal the Final Order.

5. Respondent further waives any and all remedies, claims for relief and otherwise available rights to judicial or administrative review that Respondent may have with respect to any issue of fact or law set forth in this CA/FO, including any right of judicial review under Section 307(b)(1) of the Clean Air Act, 42 U.S.C. § 7607(b)(1).

6. This Consent Agreement constitutes the entire agreement and understanding of the parties and supersedes any prior agreements or understandings, whether written or oral, among the parties with respect to the subject matter thereof.

7. The terms of this Consent Agreement may not be modified or amended except upon the written agreement of both parties, and approval of the Regional Administrator or other delegate.

8. This Consent Agreement shall be binding on Respondent and any of its successors and assignees.

9. Each party to this Consent Agreement shall bear its own costs and attorneys' fees in the action resolved thereby.

10. Each of the undersigned representatives to this Consent Agreement certifies that she or he is duly authorized by the party whom she or he represents to enter into the terms and conditions of this Consent Agreement and to bind that party to it.

B. Payment of a Civil Penalty

11. Pursuant to Section 113(d) of the Clean Air Act, Respondent shall pay a civil penalty of **\$150,000**.

12. Respondent shall pay the entire penalty within thirty (30) days of the Effective Date of this CA/FO, as defined below.

13. Respondent shall pay the penalty using a method provided on the website <http://www2.epa.gov/financial/additional-instructions-makingpayments-epa> and shall identify such payment(s) with "Docket No. CAA-02-2020-1004."

14. Within 24 hours of its payment of the penalty, Respondent shall send proof of payment to the following:

Robert Buettner
Chief, Air Compliance Branch
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency – Region 2
290 Broadway – 21st Floor
New York, NY 10007

and

Liliana Villatora
Chief, Air Branch
Office of Regional Counsel
U.S. Environmental Protection Agency – Region 2
290 Broadway – 16th Floor
New York, NY 10007

"Proof of payment" means, as applicable, a copy of the check, confirmation of credit card or debit card payment, or confirmation of wire or automated clearinghouse transfer in the amount due, and identified with "Docket No. CAA-02-2020-1004," and any other information required to demonstrate that payment has been made according to the applicable payment method.

15. If Respondent fails to timely pay the full amount of the penalty required by this CA/FO, the EPA may:

- a. request the Attorney General to bring a civil action in an appropriate district court to recover the following: the amount assessed pursuant to 42 U.S.C. § 7413(d)(1); interest from the date of the Final Order at rates established pursuant to 26 U.S.C. § 6621(a)(2); the United States' enforcement expenses; and a 10 percent quarterly nonpayment penalty, pursuant to 42 U.S.C. § 7413(d)(5);
- b. refer the debt to a credit reporting agency or a collection agency, pursuant to 40 C.F.R. §§ 13.13, 13.14 and 13.33;
- c. collect the debt by administrative offset (i.e., the withholding of money payable by the United States to, or held by the United States for, a person to satisfy the debt the person owes the Government), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds, pursuant to 40 C.F.R. Part 13, Subparts C and H; and
- d. suspend or revoke Respondent's licenses or other privileges or suspend or disqualify Respondent from doing business with the EPA or engaging in programs the EPA sponsors or funds, pursuant to 40 C.F.R. § 13.17.

16. Penalties paid pursuant to this Consent Agreement shall not be deductible for purposes of federal taxes.

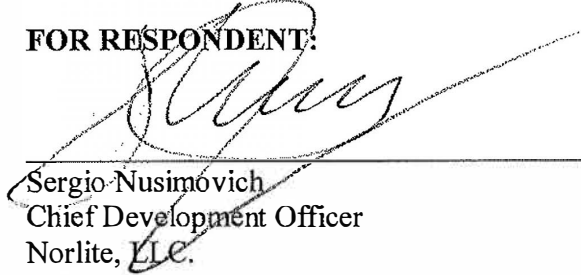
IV. EFFECTIVE DATE

17. This CA/FO shall become effective after signature of the Consent Agreement by the parties, execution of the Final Order by the Regional Administrator, and filing of the CA/FO with the Hearing Clerk. Upon filing, EPA will electronically serve a copy of the filed CA/FO on Respondent.

V. SIGNATURES

The foregoing Consent Agreement in the *Matter of Norlite, LLC*, Docket No. CAA-02-2020-1004, is hereby stipulated, agreed, and approved for entry:

FOR RESPONDENT:



Sergio Nusimovich
Chief Development Officer
Norlite, LLC.
628 South Saratoga Street
Cohoes, New York 12047

4/27/20

Date

FOR COMPLAINANT:

Dore LaPosta, Director
Enforcement and Compliance Assurance Division
United States Environmental Protection Agency, Region 2

Date

FINAL ORDER

Pursuant to 40 C.F.R. § 22.18(b) of the EPA's Consolidated Rules of Practice and Section 113(d) of the Clean Air Act, 42 U.S.C. § 7413(d), the Regional Administrator of EPA Region 2, concurs in the foregoing Consent Agreement, *In the Matter of Norlite, LLC*, CAA-02-2020-1004. The attached Consent Agreement resolving this matter, entered into by the parties, is incorporated by reference into this Final Order and is hereby approved, ratified and issued.

Peter D. Lopez
Regional Administrator
United States Environmental Protection Agency, Region 2

Date

In the Matter of *Norlite, LLC*, Respondent.
Docket No. CAA-02-2020-1004

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Consent Agreement and Final Order, dated April --, 2020, was sent this day to the following parties in the manner indicated below.

Christopher Saporita, Esq.
Assistant Regional Counsel
United States Environmental Protection Agency – Region 2

By OALJ E-Filing System to:
Headquarters Hearing Clerk
U.S. Environmental Protection Agency
Office of Administrative Law Judges

Copy by email to:
Kevin M. Young, Esq.
Young Sommer LLC
KYoung@youngsommer.com
For Respondent

Dated: April -- 2020
New York, NY

Bcc: R. Buettner, ECAD-ACB
G. LaVigna, ECAD-ACB
M. Ghaffari, ECAD-ACB
L. Villatora, ORC-Air
C. Saporita, ORC-Air
ORC—Air File
Facility File