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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION IX  
SAN FRANCISCO, CALIFORNIA

In the Matter of:	)	Docket No. CAA-09-2022-0024
	)	
Tesla, Inc.	)	
	)	CONSENT AGREEMENT AND FINAL
	)	ORDER PURSUANT TO
	)	40 C.F.R. §§ 22.13 AND 22.18
Respondent.	)	
_____	)	

I. CONSENT AGREEMENT

The United States Environmental Protection Agency, Region IX (“EPA”), and Tesla, Inc. (“Respondent”) 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 and 22.18.

A. AUTHORITY AND PARTIES

1. This is a civil administrative action instituted pursuant to Section 113(a)(3)(A) and (d) of the Clean Air Act (“CAA” or the “Act”), 42 U.S.C. § 7413(a)(3)(A) and (d), for the assessment of a civil administrative penalty against Respondent for violations of Section 112 of the CAA.

2. Complainant is the Director of the Enforcement and Compliance Assurance Division, EPA Region IX, who has been duly delegated the authority to bring this action and to sign a consent agreement settling this action.
3. Respondent is a company incorporated in Delaware whose principal offices are located at 13101 Tesla Road in Austin, Texas.

B. APPLICABLE STATUTORY AND REGULATORY SECTIONS

4. Section 112 of CAA, 42 U.S.C. § 7412, creates a comprehensive regulatory program for limiting emissions of hazardous air pollutants (“HAPs”) from stationary sources by listing 189 HAPs and directing EPA to list all categories of major and area sources of HAPs and establish emission standards for such source categories that reflect maximum achievable control technology under the National Emissions Standards for Hazardous Air Pollutants (“NESHAPS”).
5. EPA promulgated NESHAPS for surface coating of automobiles and light-duty trucks at 40 C.F.R. Part 63, Subpart IIII (40 C.F.R. §§ 63.3080 to 63.3176) (“the Subpart IIII Standards”) in 2004 to implement section 112(d) of the Act by requiring automobile and light-duty truck surface coating operations located at major sources of HAPs to meet emission standards reflecting the application of the maximum achievable control technology.
6. The Subpart IIII Standards apply to “each new, reconstructed, or existing affected source,” as defined in 40 C.F.R. § 63.3082, that is located at a facility which applies topcoat to new automobile or new light-duty truck bodies or body parts for new automobiles or new light-duty trucks, and that is a major source of HAP emissions.

7. Under 40 C.F.R. § 63.3083, compliance with the Subpart III Standards was required by June 25, 2004 for new or reconstructed affected sources that started operations before that date; on the date of initial startup for new or reconstructed affected sources that started operations after June 25, 2004; and on April 26, 2007 for existing affected sources.
8. Under 40 C.F.R. § 63.3082, the term “new, reconstructed, or existing affected source” is defined to include all coating operations; all storage containers and mixing vessels in which coatings, thinners, and cleaning materials are stored or mixed; all equipment and containers used for conveying coatings, thinners, and cleaning materials.
9. Under 40 C.F.R. § 63.3081(b), a major source of HAP emissions is any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit any single HAP at a rate of 10 tons or more per year or any combination of HAPs at a rate of 25 tons or more per year.
10. Under 40 C.F.R. § 63.3091, existing affected sources must limit combined organic HAP emissions to the atmosphere from various coating operations to no more than 0.60 pound/gallon of coating solids deposited during each month, determined according to the requirements set forth at 40 C.F.R. § 63.3161.
11. Under 40 C.F.R. § 63.3094, all affected sources must develop and implement a work practice plan to minimize organic HAP emissions from the storage, mixing, and conveying of coatings, thinners, and cleaning materials used in, and waste materials generated by, all coating operations subject to emissions limits set forth at 40 C.F.R. §§ 63.3090 and 63.3091.
12. Under 40 C.F.R. § 63.3130(c), all affected sources must verify compliance with limits on organic HAP emissions by collecting and keeping records of: (1) the volume used in each

month, the mass fraction organic HAP content, the density, and the volume fraction of solids of each coating used for various coating operations; (2) the volume used in each month, the mass fraction organic HAP content, and the density of each thinner used in various coating operations; (3) a record of the calculation of the organic HAP emission rate for various coating operations, including all raw data, algorithms, and intermediate calculations.

13. Under 40 C.F.R. § 63.3130(n), all affected sources must collect and keep the work practice plans required by 40 C.F.R. § 63.3094 and documentation demonstrating implementation of the plans on a continuous basis, including operational and maintenance records, records of documented inspections, and records of internal audits.
14. Under 40 C.F.R. § 63.3131(b), all affected sources subject to recordkeeping requirements of 40 C.F.R. § 63.3130 must keep each record for five years following the date of its generation.
15. Under 40 C.F.R. § 63.3163(a), all affected sources must demonstrate continuous compliance with the applicable emission limit in 40 C.F.R. § 63.3091 by calculating the organic HAP emission rate on a monthly basis according to the procedures set forth in 40 C.F.R. § 63.3161.
16. Under 40 C.F.R. § 63.3161(d), all affected sources must demonstrate initial compliance with the applicable emission limit in 40 C.F.R. § 63.3091 by complying with the procedures set forth in 40 C.F.R. § 63.3161(e) through (o).
17. Under 40 C.F.R. § 63.3161(h), all affected sources must demonstrate initial compliance with the applicable emission limit in 40 C.F.R. § 63.3091 by calculating the total mass of organic HAP emissions before consideration of add-on controls from all coatings and

thinners used during each month in the combined electrodeposition primer, primer-surfacer, topcoat, final repair, glass bonding primer, and glass bonding adhesive operations used in coating operations.

18. Sections 111(a)(3) and 112(a)(3) of the CAA, 42 U.S.C. §§ 7411(a)(3) and 7412(a)(3), define “stationary source” as “any building, structure, facility, or installation which emits or may emit any air pollutant.”
19. Section 302(g) of the CAA, 42 U.S.C. § 7602(g), defines “air pollutant” as “any air pollution agent or combination of such agents, including any physical, chemical, biological, radioactive (including source material, special nuclear material, and byproduct material) substance or matter which is emitted into or otherwise enters the ambient air.”
20. Section 302(e) of the CAA, 42 U.S.C. § 7602(e), defines “person” as “an individual, corporation, partnership, association, State, municipality, political subdivision of a State, and any agency, department, or instrumentality of the United States and any officer, agent or employee thereof.”
21. EPA and the United States Department of Justice jointly determined that this matter, although it involves alleged violations that occurred more than one year before the initiation of this proceeding, is appropriate for a civil administrative penalty assessment. *See* 42 U.S.C. § 7413(d); 40 C.F.R. § 19.4.

### C. GENERAL ALLEGATIONS

22. At all times relevant to this CAFO, Respondent was a corporation and therefore a "person" as defined in Section 302(e) of CAA, 42 U.S.C. § 7602(e).

23. At all times relevant to this CAFO, Respondent owned and operated an automobile manufacturing facility located at 45500 Fremont Boulevard, Fremont, California (the “Facility”).
24. The Facility is a “major source” of HAP emissions within the meaning of the Act.
25. The Facility contains one or more “new, reconstructed, or existing affected sources” within the meaning of 40 C.F.R. § 63.3082 and the Subpart IIII Standards.
26. Respondent is subject to the requirements of the Subpart IIII Standards.
27. On September 6, 2019, EPA, Region 9, issued an information request (the “First Information Request”) to Tesla pursuant to Section 114 of the Act, 42 U.S.C. § 7414. The primary purpose of the First Information Request was to determine Tesla’s compliance with CAA new source performance standards and Subpart IIII Standards.
28. On October 28 and December 11, 2019 and February 14 and March 6, 2020, Tesla submitted its response (the “First Response”) to the First Information Request to EPA, Region 9. Tesla also submitted a supplemental response to the First Information Request on March 5, 2021.
29. On December 11, 2020, EPA, Region 9, issued a second information request (the “Second Information Request”) to Tesla pursuant to Section 114 of the Act, 42 U.S.C. § 7414. The primary purpose of the Second Information Request was to obtain additional information regarding Tesla’s compliance with the Subpart IIII Standards.
30. On January 29, February 16, and March 1, 2021, Tesla submitted its response (the “Second Response”) to the Second Information Request to EPA, Region 9; hereinafter the First Response and Second Response will be referred to collectively as the

“Responses”. Tesla also submitted a response to EPA’s follow-up questions on April 5, 2021.

31. On April 23, 2021, EPA issued a Finding and Notice of Violation (“NOV”), Docket No. R9-CAA-21-1007, notifying Tesla of alleged violations of the Subpart III Standards.
32. On June 9, 2021, Tesla submitted its initial response to the NOV.
33. On June 11, 2021, and June 24, 2021, representatives of EPA and Tesla met to discuss Tesla’s response to the NOV.
34. On July 18, 2021, Tesla submitted follow-up responses to technical issues discussed with EPA at the June 24, 2021 meeting.
35. On September 28, 2021, EPA informed Tesla that it would pursue enforcement of the violations alleged in paragraphs 57 and 59 of the NOV, specifically 40 C.F.R. §§ 63.3094 and 63.3130(c), and an alleged violation of 40 C.F.R. § 63.3163.
36. On October 1, 2021, the parties executed a tolling agreement in which the parties agreed to toll claims for alleged violations of 40 C.F.R. §§ 63.3094, 63.3130, and 63.3163 at the Facility.

#### D. VIOLATIONS ALLEGED BY EPA

##### Count 1

##### Failure to Develop and Implement Work Practice Plan; 40 C.F.R. § 63.3094

37. Paragraphs 1 through 36 above are incorporated herein by reference as if they were set forth here in their entirety.
38. In or about October 2016 through September 2019, Respondent failed to develop and/or implement a work practice plan to minimize organic HAP emissions from the storage, mixing, and conveying of coatings, thinners, and cleaning materials used in, and waste

materials generated by, all coating operations subject to emission limits of the Subpart III Standards at the Facility.

39. Respondent's failure to develop and/or implement a work practice plan to minimize organic HAP emissions from all coating operations subject to emission limits of the Subpart III Standards at the Facility in or about October 2016 through September 2019 constitutes violations of 40 C.F.R. § 63.3094 and the Subpart III Standards.

**Count 2**

**Failure to Demonstrate Continuous Compliance with the Emission Limitations of the Subpart III Standards; 40 C.F.R. § 63.3163(a)**

40. Paragraphs 1 through 39 above are incorporated herein by reference as if they were set forth here in their entirety.
41. In or about October 2016 through September 2019, Respondent failed to perform calculations of the total mass of organic HAP emissions before consideration of add-on controls from all coatings and thinners used during each month in coating operations at the Facility.
42. Respondent's failure to perform calculations of the total mass of organic HAP emissions before consideration of add-on controls from all coatings and thinners used during each month in coating operations at the Facility in or about October 2016 through September 2019 constitute violations of 40 C.F.R. §§ 63.3161(h) and 63.3163(a) and the Subpart III Standards.



### Count 3

#### Failure to Collect and Keep Records; 40 C.F.R. § 63.3130

43. Paragraphs 1 through 42 above are incorporated herein by reference as if they were set forth here in their entirety.
44. In or about October 2016 through September 2019, Respondent failed to collect and keep: (1) records of the calculation of the organic HAP emission rate for various coating operations, including all raw data, algorithms, and intermediate calculations; and (2) records demonstrating implementation of the work practice plan required under 40 C.F.R. § 63.3094 on a continuous basis.
45. Respondent's failure to collect and keep: (1) records of the calculation of the organic HAP emission rate for various coating operations, including all raw data, algorithms, and intermediate calculations; and (2) records demonstrating implementation of the work practice plan required under 40 C.F.R. § 63.3094 on a continuous basis in or about October 2016 through September 2019, constitutes a violation of 40 C.F.R. § 63.3130 and the Subpart III Standards.

#### E. CIVIL ADMINISTRATIVE PENALTY

46. Respondent agrees to the assessment of a civil penalty of TWO HUNDRED SEVENTY-FIVE THOUSAND DOLLARS (\$275,000) for the claims set forth herein as final settlement of the civil claims against Respondent as alleged in Section I.D of the CAFO.
47. Respondent shall pay the assessed penalty according to the terms of this CAFO within thirty (30) days of the Effective Date of the CAFO. Payment shall be made by cashier's or certified check payable to the "Treasurer, United States of America," or be paid by one of the other methods listed below:

a. Regular or Certified Mail:

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

b. 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."

c. Overnight Mail:

U.S. Environmental Protection Agency  
Government Lockbox 979077  
1005 Convention Plaza  
Mail Station SL-MO-C2GL  
St. Louis, MO 63101  
Contact: Craig Steffen (513) 487-2091

d. ACH (also known as REX or remittance express):

US Treasury REX/Cashlink ACH Receiver  
ABA: 051036706  
Account Number: 310006, Environmental Protection Agency  
CTX Format Transaction Code 22 – checking  
Physical location of US Treasury Facility:  
5700 Rivertech Court  
Riverdale, MD 20737  
Remittance Express (REX): 1-866-234-5681

e. Online Payment:

This payment option can be accessed from the information below:

www.pay.gov  
Enter "sfo1.1" in the search field  
Open form and complete required fields

If any clarification regarding a particular method of payment remittance is needed, please contact the EPA Cincinnati Finance Center at 513-487-2091. The payment shall be accompanied by a transmittal letter identifying the case name, the case docket number, and this CAFO. Concurrent with delivery of the payment of the penalty, Respondent shall send by e-mail a copy of the 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, and transmittal letter to the following addresses:

Regional Hearing Clerk  
Office of Regional Counsel (ORC-1)  
U.S. Environmental Protection Agency, Region IX  
75 Hawthorne Street  
San Francisco, CA 94105  
[R9HearingClerk@epa.gov](mailto:R9HearingClerk@epa.gov)

Scott Connolly  
Enforcement and Compliance Assurance Division (ENF-4-1)  
U.S. Environmental Protection Agency, Region IX  
75 Hawthorne Street  
San Francisco, CA 94105  
[Connolly.scott@epa.gov](mailto:Connolly.scott@epa.gov)

48. 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.
49. In the event Respondent fails to pay the assessed penalty to EPA by the time required in Paragraph 47 of this CAFO, Respondent shall pay stipulated penalties as follows: FIVE HUNDRED DOLLARS (\$500) per day for the first to fifteenth day of delay, ONE THOUSAND DOLLARS (\$1,000) per day for the sixteenth to thirtieth day of delay, and

FIVE THOUSAND DOLLARS (\$5,000) per day for each day of delay thereafter.

Compliance by Respondent shall include completion of any activity under this CAFO in a manner acceptable to EPA and within the specified time schedules in and approved under this CAFO.

50. Stipulated penalties shall begin to accrue on the day after performance is due and shall continue to accrue through the final day until performance is complete. Respondent shall pay stipulated penalties within fifteen (15) days of receipt of a written demand by Complainant for such penalties. Payment of stipulated penalties shall be made in accordance with the procedure set forth for payment of penalties in Section I.E of this CAFO.
51. If a stipulated penalty is not paid in full, interest shall begin to accrue on the unpaid balance at the end of the fifteen-day period at the current rate published by the United States Treasury, as described at 40 C.F.R. § 13.11. Complainant reserves the right to take any additional action, including but not limited to, the imposition of civil penalties, to enforce compliance with this CAFO or with the CAA and the implementing regulations.
52. Notwithstanding any other provision of this Section, EPA may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this CAFO.

#### F. ADDITIONAL TERMS OF CONSENT AGREEMENT

53. 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 the 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, for the purpose of this proceeding in Docket No. CAA-09-2022-0024, any right to contest the allegations contained in Section I.D of the CAFO; and (v) waives the right to appeal the proposed final order contained in this CAFO.

#### G. CERTIFICATION OF COMPLIANCE

54. In executing this CAFO, Respondent certifies that, based on information and belief, formed after reasonable inquiry, it is currently in compliance with any requirements of the Subpart IIII Standards that may apply to its ongoing operations.

#### H. RETENTION OF RIGHTS

55. In accordance with 40 C.F.R. § 22.18(c), Respondent's full compliance with this Consent Agreement shall only resolve Respondent's liability for federal civil penalties. 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.D of the 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.D of the CAFO.
56. 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.

#### I. MISCELLANEOUS

57. This CAFO may be amended or modified only by written agreement executed by both EPA and Respondent.

58. The headings in this CAFO are for convenience of reference only and shall not affect interpretation of this CAFO.
59. Each party to this action shall bear its own costs and attorneys' fees.
60. Respondent consents to entry of this CAFO without further notice.

J. EFFECTIVE DATE


61. 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 either the Regional Judicial Officer or Regional Administrator, is filed with the Regional Hearing Clerk.

K. BINDING EFFECT

62. 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.
63. 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.

FOR RESPONDENT, TESLA, INC.

02.02.2022  
DATE

  
NAME: Laurie Shelby  
TITLE: Vice President of Environmental, Health and Safety

FOR COMPLAINANT, EPA REGION IX:

DATE

**AMY MILLER-  
BOWEN** Digitally signed by AMY  
MILLER-BOWEN  
Date: 2022.02.14 10:44:37  
-08'00'  
Amy C. Miller-Bowen  
Director  
Enforcement and Compliance Assurance Division  
U.S. Environmental Protection Agency, Region IX

II. FINAL ORDER

Complainant and Respondent, Tesla, Inc., having entered into the foregoing Consent Agreement,

IT IS HEREBY ORDERED that this CAFO (Docket No. CAA-09-2022-0024) be entered, and that Respondent shall pay a civil administrative penalty in the amount of TWO HUNDRED SEVENTY-FIVE THOUSAND DOLLARS (\$275,000), and comply with the terms and conditions set forth in the Consent Agreement.

**STEVEN  
JAWGIEL**

Digitally signed by STEVEN  
JAWGIEL  
Date: 2022.02.16 15:30:08  
-08'00'

\_\_\_\_\_  
DATE

\_\_\_\_\_  
Steven Jawgiel  
Regional Judicial Officer  
U.S. Environmental Protection Agency, Region IX



CERTIFICATE OF SERVICE

I certify that the fully executed Consent Agreement and Final Order, (**Docket No CAA-09-2022-0024**) was filed with the Regional Hearing Clerk, U.S. EPA, Region IX, and that a true and correct copy of the same was sent to the following parties:

**Via E-Mail**

Laurie Shelby  
Vice President of Environmental, Health and Safety  
Tesla, Inc.  
13101 Tesla Road  
Austin, TX 78725  
[lshelby@tesla.com](mailto:lshelby@tesla.com)

Yesenia Villaseñor  
Associate General Counsel  
Environmental Health & Safety  
[yvillasenor@tesla.com](mailto:yvillasenor@tesla.com)

**Via E-Mail**

David Kim  
Assistant Regional Counsel  
U.S. EPA, Region IX  
75 Hawthorne Street  
San Francisco, CA 94105  
[Kim.David@epa.gov](mailto:Kim.David@epa.gov)

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Ponly Tu  
Regional Hearing Clerk  
U.S. EPA, Region IX

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Date