

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION IX

In the matter of:)	U.S. EPA Docket No.
)	
)	RCRA(3008)-09-2019- <u>0029</u>
Tesla, Inc.)	
45500 Fremont Blvd)	CONSENT AGREEMENT
Fremont, CA 94538)	FINAL ORDER PURSUANT TO
)	40 C.F.R. SECTIONS 22.13 AND
)	22.18
<u>Respondent.</u>)	

CONSENT AGREEMENT

A. PRELIMINARY STATEMENT

1. This is a civil administrative enforcement action instituted pursuant to Section 3008(a)(1) of the Resource Conservation and Recovery Act ("RCRA"), as amended, 42 U.S.C. § 6928(a)(1), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, as codified at 40 Code of Federal Regulations (C.F.R.) Part 22 ("Consolidated Rules").
2. Complainant is the United States Environmental Protection Agency, Region IX ("EPA").
3. Respondent is Tesla, Inc. (which does business in California as Tesla Motors Inc.), a Delaware corporation, headquartered at 3500 Deer Creek Road, Palo Alto, California, 94304.
4. This Consent Agreement and Final Order ("CA/FO"), pursuant to 40 C.F.R. §§ 22.13 and 22.18, simultaneously commences and concludes this proceeding, wherein EPA alleges that Respondent violated Section 3008 of RCRA, 42 U.S.C. § 6928, and state regulations adopted pursuant to the approved California hazardous waste management program.
5. The Parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their respective interest and in the public interest.

B. STATUTORY AND REGULATORY FRAMEWORK

6. Subtitle C of RCRA requires the EPA Administrator to promulgate regulations establishing a hazardous waste management program. Section 3006 of RCRA, 42 U.S.C. § 6926, provides, *inter alia*, that authorized state hazardous waste management programs are carried out under Subtitle C of RCRA. Therefore, a violation of any requirement of

law under an authorized state hazardous waste program is a violation of a requirement of Subtitle C of RCRA.

7. The State of California (“State”) received authorization to administer the hazardous waste management program in lieu of the federal program pursuant to Section 3006 of RCRA, 42 U.S.C. § 6926, and 40 C.F.R. Part 271, on August 1, 1992. The authorized hazardous waste program is established pursuant to the Hazardous Waste Control Law, Chapter 6.5 of Division 20 of the California Health and Safety Code, and the regulations promulgated thereunder at Title 22, Division 4.5 of the California Code of Regulations, 22 C.C.R. §§ 66001 *et seq.* The State has been authorized for all the hazardous waste management regulations referenced in this CA/FO.
8. A violation of California’s authorized hazardous waste program, found at Health & Safety Code § 25100 *et seq.*, constitutes a violation of Subtitle C of RCRA and, therefore, a person who violates California’s authorized hazardous waste program is subject to the powers vested in the EPA Administrator by Section 3008 of RCRA, 42 U.S.C. § 6928.

C. EPA’S GENERAL ALLEGATIONS

9. Respondent owns and operates the facility located at 45500 Fremont Boulevard, Fremont, California (the “Facility”). Respondent manufactures electric vehicles at the Facility. Respondent is a large quantity generator of hazardous wastes as defined in California Health & Safety Code § 25117, and 22 C.C.R. §§ 66260.10 and 66261.3, with EPA ID No. CAD000051433.
10. On November 28, 2017 and December 12, 2017, EPA conducted compliance evaluation inspections (“CEI”) at the Facility pursuant to Subtitle C of RCRA. Based upon the findings EPA made during the inspections, and additional information obtained subsequent to the inspections, EPA determined that Respondent violated California Health & Safety Code § 25100 *et seq.* and the regulations adopted pursuant thereto, as approved and authorized by the United States.
11. Section 3008 of RCRA, 42 U.S.C. § 6928, authorizes the EPA Administrator to issue orders assessing a civil penalty and/or requiring compliance immediately or within a specified time for violation of any requirement of Subtitle C of RCRA, Section 3001 of RCRA *et seq.*, 42 U.S.C. § 6921 *et seq.*
12. The Administrator has delegated enforcement authority under Section 3008 of RCRA, 42 U.S.C. § 6928, to the EPA Regional Administrators, with delegation 8-9-A, last revised February 4, 2016. The Regional Administrator, EPA Region IX, in turn, redelegated that authority to the Director of the Enforcement Division, Region IX, with delegation R9-120 TN 111, dated January 22, 2016.

13. Respondent is a "person" as defined in 22 C.C.R. § 66260.10 [*see also* 40 C.F.R. § 260.10].¹
14. Respondent is the "owner" of a facility as defined in 22 C.C.R. § 66260.10 [*see also* 40 C.F.R. § 260.10].
15. Respondent is the "operator" of a facility as defined in 22 C.C.R. § 66260.10 [*see also* 40 C.F.R. § 260.10].
16. Respondent is a "generator" of hazardous waste as defined in 22 C.C.R. § 66260.10 [*see also* 40 C.F.R. § 260.10].
17. Respondent is or has been engaged in "treatment," "storage," or "disposal" of "hazardous waste" as defined in 22 C.C.R. §§ 66260.10 and 66261.3 [*see also* 40 C.F.R. §§ 260.10 and 261.3].
18. At the Facility, Respondent generates and accumulates, or has generated and accumulated, "hazardous waste" as defined in California Health & Safety Code § 25117, and 22 C.C.R. §§ 66260.10 and 66261.3 [*see also* RCRA § 1004(5), and 40 C.F.R. §§ 260.10 and 261.3]. These hazardous wastes include but are not limited to the following hazardous waste codes: D001, D002, D003, D005, D008, D009, D010, D011, D018, D025, D026, D035, D039, F003, F005, F008, P002, P009, U044, U154, and U162.

D. EPA'S ALLEGED VIOLATIONS

COUNT I

(Failure to Comply with Applicable Generator Accumulation Requirements)

19. Paragraphs 1 through 18 above are incorporated herein by this reference as if they were set forth here in their entirety.
20. At the time of the inspection, Respondent did not have a permit or grant of interim status to store hazardous waste under 22 C.C.R. § 66270.1 [*see also* 40 C.F.R. § 270.1].
21. 22 C.C.R. § 66262.34 [*see also* 40 C.F.R. § 262.17(a)] allows a generator to accumulate hazardous waste onsite for up to 90 days without a permit or interim status, provided that the generator complies with certain requirements.

¹ All citations to the "C.C.R." refer to Division 4.5 of Title 22 of the current California Code of Regulations. EPA is enforcing California hazardous waste management program requirements as approved and authorized by the United States. As a convenience, corresponding Federal citations are provided in brackets.

22. 22 C.C.R. § 66262.34(a) allows a generator to accumulate hazardous waste onsite for up to 90 days without a permit or interim status provided that the generator labels each hazardous waste tank or container with the words "hazardous waste" and labels each hazardous waste tank or container with the date accumulation of the waste begins. The label must be visible for inspection.
23. 22 C.C.R. § 66262.34(e) allows a generator to store in a satellite accumulation area only as much as 55-gallons of hazardous waste without complying with all the requirements in a permit or grant of interim status.
24. Based on information gathered during the inspection, EPA alleges that Respondent failed to promptly clean up D001 flammable paint and or solvent mixtures that had leaked from transmission lines and pumps and collected in unlabeled open trays.
25. Based on information gathered during the inspection, EPA alleges that Respondent stored over 55-gallons of D001 hazardous waste in four separate satellite accumulation areas.
26. Based on information gathered during the inspection, EPA alleges that Respondent stored used fluorescent lamps in one unlabeled and undated container and in another container that had a label dated October 14, 2014.
27. Therefore, because Respondent did not comply with all requirements applicable to generators that accumulate hazardous waste on-site, Respondent is considered to have stored hazardous waste without a permit, a violation of 22 C.C.R. § 66270.1 [*see also* 40 C.F.R. § 270.1].

COUNT II

(Failure to Comply with Container Management Requirements)

28. Paragraphs 1 through 18 above are incorporated herein by this reference as if they were set forth here in their entirety.
29. 22 C.C.R. § 66262.34(a) specifies that a generator may store hazardous waste without a permit or interim status if the generator meets certain conditions, including the requirements of 22 C.C.R. § 66265.173 [*see also* 40 C.F.R. § 262.17(a)(1)].
30. 22 C.C.R. § 66265.173 requires that "[a] container holding hazardous waste shall always be closed during transfer and storage, except when it is necessary to add or remove waste." [*see also* 40 C.F.R. § 262.17(a)(1)].
31. During the inspection, EPA inspectors observed two 55-gallon containers at the Facility that contained D001 hazardous waste and were equipped with funnels in the bung holes; the tops of the funnels were open and neither had a gasket or locking mechanism.

32. Therefore, EPA alleges that Respondent failed to comply with container management requirements for hazardous waste generators in violation of 22 C.C.R. §§ 66262.34(a)(I) and 66265.173 [*see also* 40 C.F.R. § 262.17(a)(1)].

COUNT III

(Failure to Make an Adequate Hazardous Waste Determination)

33. Paragraphs 1 through 18 above are incorporated herein by this reference as if they were set forth here in their entirety.
34. 22 C.C.R. § 66262.11 requires a person who generates a waste, as defined by 22 C.C.R. § 66261.2, to make an accurate determination as to whether that waste is a hazardous waste. [*see also* 40 C.F.R. § 262.11].
35. Respondent identified its waste purge solvent as an ignitable hazardous waste (D001) on its hazardous waste manifest but failed to determine that the purge solvent also exhibited the characteristic of toxicity (D035). As a result, Respondent failed to include the D035 waste code on its hazardous waste manifest forms for its purge solvent.
36. Therefore, EPA alleges that Respondent failed to make an adequate hazardous waste determination, a violation of 22 C.C.R. § 66262.11 [*see also* 40 C.F.R. § 262.11].

COUNT IV

(Failure to Comply with Air Emission Standards for Equipment Leaks)

37. Paragraphs 1 through 18 above are incorporated herein by this reference as if they were set forth here in their entirety.
38. Title 22, Division 4.5, Chapter 15, Article 28 (Air Emission Standards for Equipment Leaks) of the California Code of Regulations (“Article 28”) [*see also* 40 C.F.R. §§ 265.1050-1065] requires a large quantity generator of RCRA hazardous wastes to control air emissions from equipment leaks, by, *inter alia*, determining the percent-by-weight total organics in the hazardous waste stream at the equipment, tagging all equipment subject to Article 28, conducting leak detection monitoring and keeping records.
39. During the inspection, EPA observed that Respondent was not implementing the air emission standards for equipment leaks for three lines with ancillary equipment (valves, flanges, etc.) which transfer hazardous waste (Flammable Clearcoat Waste and Flammable Primer Waste) from fixed product tanks to 55-gallon drums.
40. Therefore, EPA alleges that Respondent failed to comply with the requirements for air emission standards for equipment leaks, in violation of 22 C.C.R. §§ 66262.34(a)(I)(i);

66265.1050(a); 66265.1050(c); 66265.1057; 66265.1063(d); 66265.1064(b)(1) [*see also* 40 C.F.R. §§ 262.17(a)(1)(i); 265.1050(a); 265.1050(c); 265.1057; 265.1063(d); 265.1064(b)(1)].

COUNT V
(Failure to Comply with Aisle Space Requirements)

41. Paragraphs 1 through 18 above are incorporated herein by this reference as if they were set forth here in their entirety.
42. 22 C.C.R. §§ 66262.34(a)(4) and 66265.35 requires that a generator that accumulates hazardous waste on-site must maintain aisle space to allow the unobstructed movement of personnel, fire protection equipment, spill control equipment, and decontamination equipment in the waste accumulation area in an emergency, unless aisle space is not needed for any of these purposes. [*see also* 40 C.F.R. § 262.255].
43. During the inspection, EPA observed that Respondent did not maintain adequate aisle space in the main central hazardous waste accumulation area.
44. Therefore, EPA alleges that Respondent failed to comply with the requirements for aisle space, in violation of in violation of 22 C.C.R. §§ 66262.34(a)(4); 66265.35 [*see also* 40 C.F.R. § 262.255].

E. CIVIL PENALTY

45. The Complainant proposes that Respondent be assessed, and Respondent agrees to pay THIRTY-ONE THOUSAND DOLLARS (\$31,000) as the civil penalty for the violations alleged herein.
46. The proposed penalty was calculated in accordance with the “June 2003 RCRA Civil Penalty Policy,” and was adjusted for inflation by the Federal Civil Penalties Inflation Adjustment Act, as amended, and the Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19.

F. ADMISSIONS AND WAIVERS OF RIGHTS

47. For the purposes of this proceeding, Respondent admits and agrees that EPA has jurisdiction and authority over the subject matter of the action commenced in this CA/FO and over Respondent. Respondent consents to and agrees not to contest EPA's jurisdiction and authority to enter into and issue this CA/FO and to enforce its terms. Further, Respondent will not contest EPA's jurisdiction and authority to compel compliance with this CA/FO in any enforcement proceedings, either administrative or judicial, or to impose sanctions for violations of this CA/FO.

48. For the purposes of this proceeding, Respondent admits the facts stipulated in the consent agreement and does not admit any liability arising out of the occurrences alleged in this CA/FO. Respondent hereby waives any rights Respondent may have to contest the allegations and to appeal the proposed Final Order accompanying this Consent Agreement and made part of this CA/FO.

G. PARTIES BOUND

49. This CA/FO shall apply to and be binding upon Respondent and its agents, successors and assigns, until the civil penalty required under Sections E and H has been paid in accordance with Section H, the Supplemental Environmental Project (“SEP”) required under Section I has been completed in accordance with Section I, and any delays in performance and/or stipulated penalties have been resolved. When those matters are concluded, this CA/FO shall terminate and constitute full settlement of the violations alleged herein.
50. No change in ownership or corporate, partnership or legal status relating to the Facility will in any way alter Respondent’s obligations and responsibilities under this CA/FO.
51. The undersigned representative of Respondent hereby certifies that he or she is fully authorized by Respondent to enter into this CA/FO, to execute and to legally bind Respondent to it.

H. PAYMENT OF CIVIL PENALTY

52. Respondent consents to the assessment of and agrees to pay a civil penalty of THIRTY-ONE THOUSAND DOLLARS (\$31,000) in full settlement of the federal civil penalty claims set forth in this CA/FO.
53. Respondent shall submit payment of THIRTY-ONE THOUSAND DOLLARS (\$31,000) within thirty (30) calendar days of the Effective Date of this CA/FO, in accordance with one of the options set forth below. The Effective Date of this CA/FO is the date the Final Order, signed by the Regional Judicial Officer, is filed with the Regional Hearing Clerk. All payments shall indicate the name of the Facility, the Respondent's name and address, and the EPA docket number of this action.

Regular Mail:

Payment shall be made by certified or cashier's check payable to “Treasurer, United States of America,” and sent as follows:
U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center

In the Matter of Tesla, Inc.
Consent Agreement and Final Order

PO Box 979077
St. Louis, MO 63197-9000

Overnight Mail:

Payment shall be made by certified or cashier's check payable to "Treasurer, United States of America," and sent as follows:

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

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

Beneficiary: US Environmental Protection Agency

*Note: Foreign banks **must** use a United States Bank to send a wire transfer to the US EPA.

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

On Line Payment:

Payers can use their credit or debit cards (Visa, MasterCard, American Express & Discover) as well as checking account information to make payments.

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.

54. At the time payment is made, a copy of the check shall be sent to:

Regional Hearing Clerk
Office of Regional Counsel (ORC-1)
U.S. Environmental Protection Agency - Region 9
75 Hawthorne Street
San Francisco, CA 94105

With an electronic copy to:

Rick Sakow (ENF-2-2)
Enforcement Division
U.S. Environmental Protection Agency - Region 9
Sakow.Rick@epa.gov

And

Rebekah Reynolds (ORC-3-2)
Office of Regional Counsel
U.S. Environmental Protection Agency – Region 9
Reynolds.Rebekah@epa.gov

55. In accordance with the Debt Collection Act of 1982 and U.S. Treasury directive (TFRM 6-8000), each payment must be received by the due date set forth in this CA/FO to avoid additional charges. If payment is not received by the due date, interest will accrue from the Effective Date of this CA/FO at the current rate published by the United States Treasury as described at 40 C.F.R. § 13.11. In addition, a 6% per annum penalty assessed monthly will further apply on any principal amount not paid within ninety (90) calendar days of its due date. Respondent further will be liable for stipulated penalties as set forth below for any payment not received by its due date.
56. The penalties specified in this CA/FO shall represent civil penalties assessed by EPA and shall not be deducted by Respondent or any other person or entity for federal, state, or local taxation purposes.

I. SUPPLEMENTAL ENVIRONMENTAL PROJECT

57. As a condition of settlement, Respondent shall perform an emergency planning and preparedness Supplemental Environmental Project (SEP) to enhance the emergency response capabilities of the City of Fremont Fire Department. Performance of the tasks detailed in this Section shall constitute satisfactory performance of the SEP, which the parties agree is intended to provide significant environmental or public health protection and improvements.
58. The City of Fremont Fire Department's mission, among other things, is to prevent and minimize the loss of life and property threatened by hazardous materials incidents within the community. In developing this SEP, Respondent contacted the City of Fremont Fire Department and inquired whether it could use emergency planning and preparedness assistance to better plan for and respond to hazardous materials incidents. In response to this inquiry, the City of Fremont Fire Department requested the purchase of certain equipment to improve its abilities to respond to hazardous materials incidents.
59. Within sixty (60) days of the effective date of this CA/FO, Respondent shall purchase the following emergency response equipment for the City of Fremont Fire Department: (1) a drone used to carry hazardous material sensors, cameras and other payloads (Aeryon Skyranger Drone or similar \$35,500); and (2) a drone detection device that works like radar for drones to help ensure that there are no unauthorized drones flying near an emergency scene (DJI Aeroscope or similar \$19,500).
60. Respondent shall use all reasonable efforts to provide equipment to the City of Fremont Fire Department as described above but may substitute equipment that supports emergency planning and preparedness that is similar in total cost to the equipment described above with the consent of the City of Fremont Fire Department and EPA. Such adjustments may change the total amount spent. Any substitution changing the total amount spent is subject to Section J.
61. Respondent shall expend at least FIFTY-FIVE THOUSAND DOLLARS (\$55,000) to complete the SEP described herein.
62. Within one hundred and twenty (120) days of the Effective Date of the CA/FO, Respondent shall submit a SEP Completion Report to EPA. The SEP Completion Report shall contain the following information: (i) a detailed description of the SEP as implemented with an accounting showing the amount Respondent expended for the implementation of the SEP and substantiating documentation, including but not limited to invoices, purchase orders, checks or receipts, and correspondence with the City of Fremont Fire Department; (ii) a brief, narrative description of the environmental and public health benefits resulting from implementation of the project; and (iii) certification that the project has been fully implemented pursuant to the provisions of the CA/FO, as described in further detail below.

63. In the SEP Completion Report, Respondent shall, by its officers, sign and certify under penalty of law that the information contained in such document or report is true, accurate, and not misleading by signing the following statement: "I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment." The Final SEP Completion Report shall be submitted via hard copy or electronic mail to:

Rick Sakow (ENF-2-2)
Enforcement Division
U.S. Environmental Protection Agency - Region 9
75 Hawthorne Street
San Francisco, CA 94105
Sakow.Rick@epa.gov

With a copy to:

Jeff Kleven
Acting Division Chief Operations
City of Fremont Fire Department
3300 Capital Ave Building A
Fremont CA 94538

64. Failure to complete the SEP Completion Report required herein shall be deemed a violation of this CA/FO and Respondent shall be liable for stipulated penalties pursuant to Section J.
65. With regard to the SEP, Respondent certifies the truth and accuracy of each of the following: (a) that all cost information provided to the EPA in connection with the EPA's approval of the SEP is complete and accurate and that Respondent in good faith estimates that the cost to implement the SEP is at least \$55,000 DOLLARS; (b) that, as of the date of this CA/FO, Respondent is not required to perform or develop the SEP by any federal, state, or local law or regulation and is not required to perform or develop the SEP by agreement, grant, or as injunctive relief awarded in any other action in any forum; (c) that the SEP is not a project that Respondent was planning or intending to construct, perform or implement other than in settlement of the claims resolved in this CA/FO; (d) that Respondent has not received and will not receive credit for the SEP in any other enforcement action; (e) that Respondent will not receive reimbursement for any portion of the SEP from another person or entity; (f) that for federal income tax purposes, Respondent will neither capitalize into inventory or basis nor deduct any costs or expenditures incurred in performing the SEP; and (g) that Respondent is not a party to

any federal financial transaction that is funding or could fund the same activity as the SEP described in this CA/FO and has inquired of the City of Fremont Fire Department whether it is a party to an open federal financial assistance transaction that is funding or could fund the same activity as the SEP and has been informed by the Fremont Department that it is not a party to such a transaction.

66. Any public statement, oral or written, in print, film, or other media, made by Respondent making reference to the SEP under this CA/FO from the date of its execution of this CA/FO shall include the following language: "This project was undertaken in connection with the settlement of an enforcement action taken by the Environmental Protection Agency to enforce federal laws."

J. DELAY IN PERFORMANCE/STIPULATED PENALTIES

67. In the event Respondent fails to meet any requirement set forth in this CA/FO, Respondent shall pay stipulated penalties as follows: FIVE HUNDRED DOLLARS (\$500) per day for first to fifteenth day of delay, ONE THOUSAND DOLLARS (\$1,000) per day for sixteenth to thirtieth day of delay, and THREE THOUSAND DOLLARS (\$3,000) per day for each day of delay thereafter. Compliance by Respondent shall include completion of any activity under this CA/FO in a manner acceptable to EPA and within the specified time schedules in and approved under this CA/FO.
68. In the event that Respondent fails to substantially conduct the SEP in accordance with the terms of this CA/FO, Respondent shall pay a stipulated penalty of EIGHTY-TWO THOUSAND FIVE HUNDRED DOLLARS (\$82,500) less any stipulated penalties already paid for failure to submit the SEP Completion Report pursuant to Paragraph 62.
69. For failure to timely complete the SEP and submittal of the SEP Completion Report required by Section I, Respondent shall pay a stipulated penalty in the amount of FIVE HUNDRED DOLLARS (\$500) for each day after that performance was due until the date of correction of the noncompliance. Stipulated penalties for failure to submit the SEP Completion Report shall begin to accrue on the day after the report is due, and shall continue to accrue through the final day of EPA's receipt of this document. Notwithstanding the penalty amounts described in this paragraph, the total stipulated penalty paid by Respondent pursuant to this paragraph shall not exceed EIGHTY-TWO THOUSAND FIVE HUNDRED DOLLARS (\$82,500).
70. If Respondent demonstrates that the SEP tasks described in Paragraph 59 were completed, but Respondent incurs less than 90 percent of the costs required to be incurred pursuant to Paragraph 59 for the tasks described in Paragraph 59, Respondent shall pay a stipulated penalty to the United States that is the difference between FIFTY-FIVE THOUSAND DOLLARS (\$55,000) and the actual costs incurred by Respondent toward completion of the tasks described in Paragraph 59.

71. If Respondent fails to demonstrate that the SEP tasks in Section I were completed, but EPA determines that the Respondent: (i) made good faith and timely efforts to complete these tasks; and (ii) certifies, with supporting documentation, that at least 90 percent of the costs that were required to be incurred pursuant to Section I were incurred for the SEP tasks described in Section I Respondent shall not be liable for any stipulated penalty under this paragraph.
72. For failure to submit the SEP Completion Report required by Section I, Respondent shall pay a stipulated penalty in the amount of FIVE HUNDRED DOLLARS (\$500) for each day after the date the SEP Completion Report was due until it is submitted. Stipulated penalties for failure to submit the SEP Completion Report shall begin to accrue on the day after the report is due, and shall continue to accrue through the final day of EPA's receipt of this document. Notwithstanding the penalty amounts described in this paragraph, the total stipulated penalty paid by Respondent pursuant to this paragraph shall not exceed EIGHTY-TWO THOUSAND FIVE HUNDRED DOLLARS (\$82,500).
73. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations.
74. All penalties owed to EPA under this Section shall be due within thirty (30) days of receipt of a notification of noncompliance. Such notification shall describe the noncompliance and shall indicate the amount of penalties due. Interest at the current rate published by the United States Treasury, as described at 40 C.F.R. § 13.11, shall begin to accrue on the unpaid balance at the end of the thirty-day period.
75. All penalties shall be remitted in the same manner described in Section H.
76. The payment of stipulated penalties shall not alter in any way Respondent's obligation to complete the performance required hereunder.
77. 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 CA/FO.
78. The stipulated penalties set forth in this Section do not preclude EPA from pursuing any other remedies or sanctions that may be available to EPA because of Respondent's failure to comply with any of the requirements of this CA/FO.
79. The payment of stipulated penalties specified in the Section shall not be deducted by Respondent or any other person or entity for federal, state or local taxation purposes.

K. CERTIFICATION OF COMPLIANCE

80. In executing this CA/FO, Respondent certifies under penalty of law to EPA that it has fully complied with Section 3008 of RCRA, 42 U.S.C. § 6928, and its implementing regulations that formed the basis for the violations alleged in Section D, above, and that it has completed the following tasks:
- a. Performed waste determinations to determine RCRA wastes which contain at least 10% by weight of organic concentrations in accordance with 22 C.C.R. § 66265.1050 [*see also* 40 C.F.R. § 265.1063(d)];
 - b. Performed waste determinations to determine RCRA wastes which have an average volatile organic concentration at the point of origination equal to or greater than 500 parts per millions (ppm) by weight in accordance with 22 C.C.R. 66265.1084 [*see also* 40 C.F.R. § 265.1084];
 - c. Implemented a leak detection and repair program in accordance with 22 C.C.R. 66265 Article 28 and 22 C.C.R. § 66265.1087 [*see also* 40 C.F.R. §265.1050];
 - d. Conducted a hazardous waste determination for one specific waste stream in accordance with 22 C.C.R. § 66262.11 [*see also* 40 C.F.R. §262.11];
 - e. Closed hazardous containers (purchased funnels with gaskets and locking mechanisms for 55-gallon satellite containers holding high VOC paint wastes) in accordance with 22 C.C.R. § 66265.173 [*see also* 40 C.F.R. § 262.17(a)]; and
 - f. Labeled hazardous waste containers and added additional signage in accordance with 22 C.C.R. § 66265.173 [*see also* 40 C.F.R. § 262.17].
81. This certification of compliance is based upon true, accurate, and complete information, which the signatory can verify personally or regarding which the signatory has inquired of the person or persons directly responsible for gathering the information.

L. RESERVATION OF RIGHTS

82. Except as addressed in this CA/FO, EPA hereby reserves all of its statutory and regulatory powers, authorities, rights and remedies, both legal and equitable, including the right to require that Respondent perform tasks in addition to those required by this CA/FO. EPA further reserves all of its statutory and regulatory powers, authorities, rights and remedies, both legal and equitable, which may pertain to Respondent's failure to comply with any of the requirements of this CA/FO, including without limitation, the assessment of penalties under Section 3008 of RCRA, 42 U.S.C. § 6928. This CA/FO shall not be construed as a covenant not to sue, release, waiver or limitation of any rights,

remedies, powers or authorities, civil or criminal, which EPA has under RCRA, or any other statutory, regulatory or common law enforcement authority of the United States.

83. Compliance by Respondent with the terms of this CA/FO shall not relieve Respondent of its obligations to comply with RCRA or any other applicable local, State or federal laws and regulations.
84. The entry of this CA/FO and Respondent's consent to comply shall not limit or otherwise preclude EPA from taking additional enforcement actions should EPA determine that such actions are warranted except as they relate to Respondent's liability for federal civil penalties for the alleged violations and facts as set forth in Section D of this CA/FO.
85. This CA/FO is not intended to be nor shall it be construed as a permit. This CA/FO does not relieve Respondent of any obligation to obtain and comply with any local, State or federal permits.

M. OTHER CLAIMS

86. Nothing in this CA/FO shall constitute or be construed as a release from any other claim, cause of action or demand in law or equity by or against any person, firm, partnership, entity or corporation for any liability it may have arising out of or relating in any way to the generation, storage, treatment, handling, transportation, release, or disposal of any hazardous constituents, hazardous substances, hazardous wastes, pollutants, or contaminants found at, taken to, or taken from the Facility.

N. MISCELLANEOUS

87. This CA/FO may be amended or modified only by written agreement executed by both EPA and Respondent.
88. The headings in this CA/FO are for convenience of reference only and shall not affect interpretation of this CA/FO.
89. Each party to this action shall bear its own costs and attorneys' fees.
90. EPA and Respondent consent to entry of this CA/FO without further notice.

O. EFFECTIVE DATE

91. In accordance with 40 C.F.R. §§ 22.18(b)(3) and 22.31(b), this CA/FO shall be effective on the date that the Final Order contained in this CA/FO, having been approved and issued by the Regional Judicial Officer, is filed with the Regional Hearing Clerk.

In the Matter of Tesla, Inc.
Consent Agreement and Final Order

IT IS SO AGREED.

FOR RESPONDENT TESLA INC:

3/5/19

Date

Laurie Shelby

Laurie Shelby, VP Environmental Health & Safety

All Correspondence for Respondent:

Tesla Inc.,
Attn: Legal Department
Yesenia Villasenor
901 Page
Fremont, California 94538

E-mail: lshelby@tesla.com and
yvillasenor@tesla.com

FOR COMPLAINANT U.S. ENVIRONMENTAL PROTECTION AGENCY, REGION 9:

3/18/19

Date

Amy C. Miller

Amy C. Miller, Acting Director
Enforcement Division

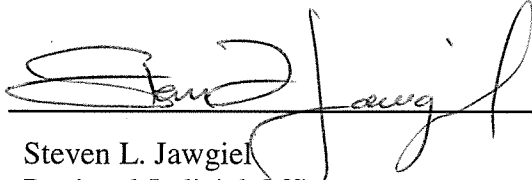
FINAL ORDER

IT IS HEREBY ORDERED that this Consent Agreement and Final Order pursuant to 40 C.F.R. Sections 22.13 and 22.18 (U.S. EPA Docket No. RCRA (3008)-09-2019-00 29) be entered and that Respondent pay a civil penalty of THIRTY-ONE THOUSAND DOLLARS (\$31,000), due within thirty (30) days from the Effective Date of this Consent Agreement and Final Order, and implement the Supplemental Environmental Project described in Section I of this CA/FO, in accordance with all terms and conditions of this CA/FO.

This Final Order shall be effective upon filing by the Regional Hearing Clerk.

03/27/19

Date



Steven L. Jawgiel
Regional Judicial Officer
United States Environmental Protection Agency,
Region 9

CERTIFICATE OF SERVICE

I hereby certify that the original and a copy of the foregoing Consent Agreement and Final Order in the matter of Tesla, Inc – California with Docket # RCRA(3008)-09-2019- 0029 has been filed with the Regional Hearing Clerk, Region 9, and a copy was sent:


By Certified Mail, Return Receipt Requested to Respondent:

Ms. Yesenia Villasenor
Legal Department
Tesla, Inc.
901 Page Avenue
Fremont, CA 94538
Certified Mail No. 7001 2501 0003 5943 3874

Hand Delivered to:

Rebecca Sugerman
Office of Regional Counsel
U.S. EPA, Region 9, ORC-3-1
75 Hawthorne Street
San Francisco, CA 94105

Mar 28, 2019
Date


Steven Armsey
Acting Regional Hearing Clerk
Office of Regional Counsel, Region 9