

FILED

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**U.S. EPA REGION 5
HEARING CLERK**

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

In the Matter of:)	Docket No. CAA-05-2024-0058
)	
Federal Cartridge Company)	Proceeding to Assess a Civil Penalty
Anoka, Minnesota)	Under Section 113(d) of the Clean Air Act,
)	42 U.S.C. § 7413(d)
Respondent.)	
_____)	

Consent Agreement and Final Order

A. Preliminary Statement

1. This is an administrative action commenced and concluded under Section 113(d) of the Clean Air Act (the CAA), 42 U.S.C. § 7413(d), and Sections 22.1(a)(2), 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules), as codified at 40 C.F.R. Part 22.
2. Complainant is the Director of the Enforcement and Compliance Assurance Division, U.S. Environmental Protection Agency (EPA), Region 5.
3. Respondent is Federal Cartridge Company, a corporation doing business in Minnesota.
4. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). 40 C.F.R. § 22.13(b).
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 interest and in the public interest.
6. Respondent consents to the assessment of the civil penalty specified in this CAFO and to the terms of this CAFO.

B. Jurisdiction and Waiver of Right to Hearing

7. For the purposes of this proceeding, as required by 40 C.F.R. § 22.18(b)(2), Respondent:
 - a. admits to the jurisdictional allegations in this CAFO;
 - b. neither admits nor denies the specific factual allegations and alleged violations of law stated in Section D, below;
 - c. consents to the assessment of a civil penalty as stated in Section E, below;
 - d. waives any right to contest the alleged violations of law set forth in Section D, below; and
 - e. waives its right to appeal this CAFO.

8. For the purposes of this proceeding, Respondent:
 - a. agrees this CAFO states a claim upon which relief may be granted against Respondent;
 - b. acknowledges this proceeding constitutes an enforcement action for purposes of considering Respondent's compliance history in any subsequent enforcement actions;
 - c. 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 CAFO, including any right of judicial review under Section 307(b)(1) of the Clean Air Act, 42 U.S.C. § 7607(b)(1); and
 - d. waives any rights it may possess at law or in equity to challenge the authority of EPA to bring a civil action in a United States District Court to compel compliance with this CAFO, and to seek an additional penalty for noncompliance, and agrees that federal law shall govern in any such civil action.

C. Statutory and Regulatory Background

9. The CAA, 42 U.S.C §§ 7401, et seq., and the regulations promulgated thereunder, establish a statutory and regulatory scheme designed to protect and enhance the quality of the

nation's air so as to promote the public health and welfare and the productive capacity of its population.

National Ambient Air Quality Standards

10. Pursuant to Sections 108 and 109 of the CAA, 42 U.S.C. §§ 7408 and 7409, EPA revised the National Ambient Air Quality Standards (“NAAQS”) for lead on November 12, 2008. 73 Fed. Reg. 67052 (2008). The revised national primary and secondary ambient air quality standards for lead and its compounds are 0.15 micrograms per cubic meter ($\mu\text{g}/\text{m}^3$), arithmetic mean concentration over a 3-month period. See 40 C.F.R. § 50.16. EPA revised the primary NAAQS for lead to provide increased protection for children and other at-risk populations against an array of adverse health effects, most notably including neurological effects in children. EPA revised the secondary standard to be identical to the revised primary standard.

11. Section 110 of the CAA, 42 U.S.C. § 7410, requires each state to adopt and submit to EPA a plan that provides for the implementation, maintenance, and enforcement of primary and secondary NAAQS in the state. Upon approval by EPA, the plan becomes a part of the applicable state implementation plan (“SIP”) for the state.

Minnesota SIP

12. On July 27, 2020, EPA approved Minnesota Administrative Rule (“Minn. R.”) 7009.0020 as part of the federally enforceable SIP for Minnesota.

13. Minn. R. 7009.0020 states, “No person shall emit any pollutant in such an amount or in such a manner as to cause or contribute to a violation of any Minnesota ambient air quality standard under part 7009.0080 beyond the person's property line, provided however, that in the event the general public has access to the person's property or portion thereof, the ambient air quality standards

apply in those locations. The general public does not include employees or other categories of people who have been directly authorized by the property owner to enter or remain on the property for a limited period of time and for a specific purpose.”

14. Minn. R. 7009.0100 states, “Person means any human being, any municipality or other governmental or political subdivision or other public agency, any public or private corporation, any partnership, firm, association, or other organization, any receiver, trustee, assignee, agent, or other legal representative of any of the foregoing, or any other legal entity, but does not include the Pollution Control Agency.”

15. Minn. R. 7009.0080 describes the Minnesota ambient air quality standard (“MAAQS”) for lead as 0.15 micrograms per cubic meter ($\mu\text{g}/\text{m}^3$) based on a rolling three-month average and stated that the form of the standard is such that the “[m]aximum 3-month rolling average from 3 consecutive years does not exceed the standard.”

16. On July 27, 2020, EPA approved Minn. R. 7011.0060 as part of the federally enforceable Minnesota SIP. 85 Fed. Reg. 45094.

17. Minn. R. 7011.0060, Subpart 3, defines “Collection Efficiency” as “the percentage of emissions entering the air pollution control equipment that are collected by the air pollution control equipment and thus removed from the exhaust stream. ‘Collection’ pertains to pollutants that are collected but molecular composition may or may not be changed.”

18. Minn. R. 7011.0060, Subpart 3a., defines “Control efficiency” as having the meaning given to control equipment efficiency in subpart 3b.

19. Minn. R. 7011.0060, Subpart 3b., defines “Control equipment efficiency” as “the percentage of emissions produced by a process that are not emitted to the atmosphere. Control

equipment efficiency is equal to the product of the capture efficiency and collection efficiency or the product of capture efficiency and destruction efficiency.”

Minnesota Pollution Control Agency Federally Enforceable State Operating Permit (“FESOP”) Program

20. On May 2, 1995, EPA approved Minn. R. 7007.0050 through 7007.1850 as part of the federally enforceable Minnesota SIP. 60 Fed. Reg. 21447.

21. Minn. R. 7007.0050 through 7007.1850 authorizes the Minnesota Pollution Control Agency (“MPCA”) to issue federally enforceable state operating permits with such terms and conditions as are necessary to ensure compliance with applicable laws and to ensure adequate protection of environmental quality.

Federal Cartridge FESOP Requirements

22. On January 13, 2021, MPCA issued Permit No. 00300156-101 (“2021 FESOP”) to Federal Cartridge Company (Federal Cartridge). The 2021 FESOP is a Major Amendment to an Air Individual Permit originally issued on December 28, 2007.

23. The 2021 FESOP at Section 4, Summary of subject items, describes EQUI 20 as Bleimeister 1 Melt Pot Exhaust.

24. The 2021 FESOP at Section 4, Summary of subject items, states that EQUI 20 is controlled by TREA 7: Fabric Filter – Medium Temperature.

25. The 2021 FESOP at Section 4, Summary of subject items, describes COMG 1 as Fabric Filter – Medium Temp – Applies to each Control Equipment.

26. The 2021 FESOP at Section 4, Summary of subject items, states that TREA 7 is included as a member of COMG 1.

27. The 2021 FESOP at Section 5, Limits and other requirements, under Requirement COMG 1 – 5.2.1 states, “The requirements of COMG 001 apply separately to each fabric filter in COMG 001.”

28. The 2021 FESOP at Section 5, Limits and other requirements, under Requirement COMG 1 – 5.2.2 states, “The Permittee shall operate and maintain the control equipment such that it achieves an overall control efficiency for Lead \geq 74 percent control efficiency.”

29. The 2021 FESOP at Section 5, Limits and other requirements, under Requirement COMG 1 – 5.2.3 states, “The Permittee shall operate and maintain the control equipment such that it achieves a control efficiency for Particulate Matter \geq 79 percent control efficiency.”

30. The Administrator of EPA (the Administrator) may assess a civil penalty of up to \$57,617 per day of violation up to a total of \$460,926 for violations that occurred after November 2, 2015 under Section 113(d)(1) of the CAA, 42 U.S.C. § 7413(d)(1), and 40 C.F.R. Part 19.

31. Section 113(d)(1) limits the Administrator’s authority to matters where the first alleged date of violation occurred no more than 12 months prior to initiation of the administrative action, except where the Administrator and the Attorney General of the United States jointly determine that a matter involving a longer period of violation is appropriate for an administrative penalty action.

32. The Administrator and the Attorney General of the United States, each through their respective delegates, have determined jointly that an administrative penalty action is appropriate for the period of violations alleged in this CAFO.

D. Factual Allegations and Alleged Violations

33. Federal Cartridge owns and operates an ammunition manufacturing facility at 900 Bob Ehlen Drive in Anoka, Minnesota (the “Facility”).

34. On July 12, 2022, EPA conducted a CAA inspection of the Facility.

35. During the CAA inspection, EPA observed multiple emission units that process and emit lead.
36. The 2021 FESOP states Federal Cartridge has the potential to emit 7.4 tons per year of lead from its Facility.
37. Federal Cartridge owns and operates a Facility that is a source of lead emissions and is subject to the requirements of Minn. R. 7009.0020.
38. On December 1, 2022, MPCA commenced operation of a source-oriented lead ambient air monitor with Site ID 27-003-6021 near the Facility (“MPCA Monitor”).
39. The three-month average lead concentration from December 2022 through February 2023 recorded at the MPCA Monitor was 0.29 $\mu\text{g}/\text{m}^3$.
40. The three-month average lead concentration from March 2023 to May 2023 recorded at the MPCA Monitor was 0.17 $\mu\text{g}/\text{m}^3$.
41. The three-month average lead concentration from April 2023 to June 2023 recorded at the MPCA Monitor was 0.22 $\mu\text{g}/\text{m}^3$.
42. Federal Cartridge submitted an “Initial Hood Certification – EQUI 20 & EQUI 21” dated May 12, 2023, to MPCA (“Hood Certification”).
43. The Hood Certification states the hood capture efficiency at EQUI 20, controlled by TREA 7, for “PM/PM10/PM2.5/Lead” is 80%.
44. On November 21 and 22, 2023, Federal Cartridge conducted performance testing at the inlet and outlet of TREA 7 (“Performance Test”).
45. The Performance Test included testing for lead and filterable PM at the baghouse inlet and outlet using EPA Reference Test Methods 1, 2, 4, 5, and 12.

46. Federal Cartridge's Performance Test identified a lead collection efficiency of 88% calculated based on measured average dust collector inlet and outlet lead mass emission rates.

47. Based on a capture efficiency of 80% determined in accordance with Minn. R. 7011.0072 Subpart 2 and a measured collection efficiency of 88%, the calculated control efficiency of lead at TREA 7 is 70%.

48. Federal Cartridge's Performance Test identified a PM collection efficiency of 63% calculated based on measured average dust collector inlet and outlet particulate matter mass emission rates.

49. Based on a capture efficiency of 80% determined in accordance with Minn. R. 7011.0072 Subpart 2 and a measured collection efficiency of 63%, the calculated control efficiency of PM at TREA 7 is 50%.

50. On August 22, 2023, EPA issued to Federal Cartridge a Notice of Violation alleging that it violated the Minnesota SIP at Minn. R. 7009.0020 by emitting lead in such an amount or in such a manner to cause or contribute to an exceedance of the MAAQS for lead from December 2022 through February 2023, March 2023 through May 2023, and April 2023 through June 2023.

51. On October 18, 2023, representatives of Federal Cartridge and EPA discussed EPA's August 22, 2023, Notice of Violation.

52. On February 1, 2024, EPA issued to Federal Cartridge a Notice of Violation alleging that Federal Cartridge failed to achieve both an overall control efficiency for lead of $\geq 74\%$ and a control efficiency for PM of $\geq 79\%$ for TREA 7 during performance testing on November 21 and 22, 2023, in violation of Requirement COMG 1 – 5.2.2 and COMG 1 – 5.2.3 of the 2021 FESOP, respectively.

53. On February 8, 2024, representatives of Federal Cartridge and EPA discussed EPA's February 1, 2024 Notice of Violation.

54. EPA alleges that Federal Cartridge violated Minnesota SIP at Minn. R. 7009.0020 by emitting lead in such an amount or in such a manner to cause or contribute to an exceedance of the MAAQS for lead from December 2022 through February 2023, March 2023 through May 2023, and April 2023 through June 2023. EPA alleges that Federal Cartridge violated its FESOP by failing to meet the minimum PM and lead control efficiencies at TREA 7.

55. Federal Cartridge is simultaneously entering into an Administrative Consent Order (ACO) docket number EPA-5-24-113(a)-MN-02 with EPA requiring certain compliance actions at the Facility.

56. As outlined in the ACO, Federal Cartridge has taken various actions to address potential sources of lead emissions at the Facility both prior and subsequent to EPA's issuance of the August 22, 2023 and February 1, 2024 Notices of Violation.

E. Civil Penalty

57. Based on analysis of the factors specified in Section 113(e) of the CAA, 42 U.S.C. § 7413(e), the facts of this case and other factors such as cooperation, Complainant has determined that an appropriate civil penalty to settle this action is \$349,471.

58. Penalty Payment. Respondent agrees to:
- a. Pay the civil penalty of \$349,471 within 30 days after the effective date of this CAFO.
 - b. Pay the civil penalty using any method provided in the table below.

Payment Method	Payment Instructions
<p>Automated Clearinghouse (ACH) payments made through the US Treasury</p>	<p>US Treasury REX/Cashlink ACH Receiver ABA: 051036706 Account Number: 310006, Environmental Protection Agency CTX Format Transaction Code 22 – checking</p> <p>In the comment area of the electronic funds transfer, state Respondent’s name and the CAFO docket number.</p>
<p>Wire transfers made through Fedwire</p>	<p>Federal Reserve Bank of New York ABA: 021030004 Account Number: 68010727 SWIFT address: FRNYUS33 33 Liberty Street New York, NY 10045 Beneficiary: US Environmental Protection Agency</p> <p>In the comment area of the electronic funds transfer, state Respondent’s name and the docket number of this CAFO.</p>
<p>Payments made through Pay.gov</p> <p>Payers can use their credit or debit cards (Visa, MasterCard, American Express & Discover) as well as checking account information to make payments.</p>	<ul style="list-style-type: none"> • Go to Pay.gov and enter “SFO 1.1” in the form search box on the top left side of the screen. • Open the form and follow the on-screen instructions. • Select your type of payment from the "Type of Payment" drop down menu. • Based on your selection, the corresponding line will open and no longer be shaded gray. Enter the CAFO docket number into the field
<p>Cashier’s or certified check payable to “Treasurer, United States of America.”</p> <p>Please notate the CAFO docket number on the check</p>	<p>For standard delivery: U.S. Environmental Protection Agency Fines and Penalties Cincinnati Finance Center P.O. Box 979078 St. Louis, Missouri 63197-9000</p> <p>For signed receipt confirmation (FedEx, UPS, Certified Mail, etc): U.S. Environmental Protection Agency Government Lockbox 979078 3180 Rider Trail S. Earth City, Missouri 63045</p>

59. Within 24 hours of the payment of the civil penalty Respondent must send a notice of payment that states Respondent's name and the docket number of this CAFO to EPA at the following addresses:

Air Enforcement and Compliance Assurance Branch
U.S. Environmental Protection Agency, Region 5
R5airenforcement@epa.gov

Mary McAuliffe
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 5
mcauliffe.mary@epa.gov

Regional Hearing Clerk (E-19J)
U.S. Environmental Protection Agency, Region 5
r5hearingclerk@epa.gov

U.S. Environmental Protection Agency
Cincinnati Finance Center
CINWD_AcctsReceivable@epa.gov

60. This civil penalty is not deductible for federal tax purposes.

61. If Respondent does not pay timely the civil penalty, EPA may request the Attorney General of the United States to bring an action to collect any unpaid portion of the penalty with interest, nonpayment penalties and the United States enforcement expenses for the collection action under Section 113(d)(5) of the CAA, 42 U.S.C. § 7413(d)(5). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

62. Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any overdue amount from the date payment was due at a rate established by the Secretary of the Treasury pursuant to 26 U.S.C. § 6621(a)(2). Respondent must pay the United States enforcement expenses, including but not limited to attorneys' fees and costs incurred by the United

States for collection proceedings. In addition, Respondent must pay a quarterly nonpayment penalty each quarter during which the assessed penalty is overdue. This nonpayment penalty will be 10 percent of the aggregate amount of the outstanding penalties and nonpayment penalties accrued from the beginning of the quarter. 42 U.S.C. § 7413(d)(5).

63. Pursuant to 26 U.S.C. § 6050X and 26 C.F.R. § 1.6050X-1, EPA is required to send to the Internal Revenue Service (“IRS”) annually, a completed IRS Form 1098-F (“Fines, Penalties, and Other Amounts”) with respect to any court order or settlement agreement (including administrative settlements), that require a payor to pay an aggregate amount that EPA reasonably believes will be equal to, or in excess of, \$50,000 for the payor’s violation of any law or the investigation or inquiry into the payor’s potential violation of any law, including amounts paid for “restitution or remediation of property” or to come “into compliance with a law.” EPA is further required to furnish a written statement, which provides the same information provided to the IRS, to each payor (i.e., a copy of IRS Form 1098-F). Failure to comply with providing IRS Form W-9 or Tax Identification Number (“TIN”), as described below, may subject Respondent to a penalty, per 26 U.S.C. § 6723, 26 U.S.C. § 6724(d)(3), and 26 C.F.R. § 301.6723-1. In order to provide EPA with sufficient information to enable it to fulfill these obligations, EPA herein requires, and Respondent herein agrees, that:

- a. Respondent shall complete an IRS Form W-9 (“Request for Taxpayer Identification Number and Certification”), which is available at <https://www.irs.gov/pub/irs-pdf/fw9.pdf>;
- b. Respondent shall therein certify that its completed IRS Form W-9 includes Respondent’s correct TIN or that Respondent has applied and is waiting for issuance of a TIN;

- c. Respondent shall email its completed Form W-9 to EPA's Cincinnati Finance Center at wise.milton@epa.gov, within 30 days after the Final Order ratifying this Agreement is filed, and EPA recommends encrypting IRS Form W-9 email correspondence; and
- d. In the event that Respondent has certified in its completed IRS Form W-9 that it does not yet have a TIN but has applied for a TIN, Respondent shall provide EPA's Cincinnati Finance Center with Respondent's TIN, via email, within five (5) days of Respondent's receipt of a TIN issued by the IRS.

F. Effect of Consent Agreement and Attached Final Order

64. The parties consent to service of this CAFO by e-mail at the following valid e-mail addresses: mcauliffe.mary@epa.gov (for Complainant), and bill.ford@lathropgpm.com (for Respondent).

65. By signing this CAFO, Respondent consents to the release of any information in this CAFO to the public and agrees this CAFO does not contain business information that is entitled to confidential treatment under 40 C.F.R. Part 2.

66. By signing this CAFO, the undersigned representative of the EPA and the undersigned representative of Respondent each certify that they are fully authorized to execute and enter into the terms and conditions of this CAFO and have the legal capacity to bind the party they represent to this CAFO.

67. By signing this CAFO, Respondent certifies the information it has supplied concerning this matter was at the time of submission true, accurate, and complete for each such submission, response, and statement. Respondent acknowledges that, under 18 U.S.C. § 1001, there are significant

penalties for submitting false or misleading information, including the possibility of fines and imprisonment for knowing submission of such information.

68. In accordance with 40 C.F.R. § 22.18(c), completion of the terms of this CAFO resolves only Respondent's liability for federal civil penalties for the violations and facts specifically alleged in this CAFO.

69. The terms, conditions, and compliance requirements of this CAFO may not be modified or amended except upon the written agreement of both parties and approval of the Regional Judicial Officer.

70. Any violation of this CAFO may result in a civil judicial action for an injunction or civil penalties of up to \$121,275 per day per violation, or both, as provided in Section 113(b) of the CAA, 42 U.S.C. § 7413(b), and 40 C.F.R. § 19.4, as well as criminal sanctions as provided in Section 113(c) of the CAA, 42 U.S.C. § 7413(c). EPA may use any information submitted under this CAFO in an administrative, civil judicial, or criminal action.

71. Each party agrees to bear its own costs, attorney's fees, and disbursements incurred in this proceeding, except in the case of a civil action brought by the Attorney General of the United States to recover unpaid penalties as described above.

72. This CAFO 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 this matter with the exception of the ACO docket number EPA-5-24-113(a)-MN-02 issued concurrently.

73. Nothing in this CAFO relieves Respondent of the duty to comply with all applicable provisions of the CAA and other federal, state, or local laws or statutes, nor does it restrict EPA's

authority to seek compliance with any applicable laws or regulations, nor is it a ruling on, or determination of, any issue related to any federal, state, or local permit.

74. Nothing in this CAFO limits the power of EPA to undertake any action against Respondent or any person in response to conditions that may present an imminent and substantial endangerment to the public health, welfare, or the environment.

75. EPA reserves the right to revoke this CAFO and settlement penalty if and to the extent that EPA finds, after signing this CAFO, that any information provided by Respondent was materially false or inaccurate at the time such information was provided to EPA, and to assess and collect any civil penalties permitted by statute for any violation described herein. EPA will give Respondent written notice of its intent to revoke this CAFO, which will not be effective until received by Respondent.

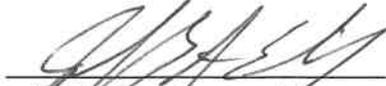
76. The Regional Judicial Officer of Region 5 is authorized to ratify the consent agreement memorializing the settlement between the EPA and Respondent and to issue the attached Final Order. 40 C.F.R. §§ 22.4(b) and 22.18(b).

H. Effective Date

77. This CAFO will be effective after the Regional Judicial Officer executes the attached Final Order, on the date of filing with the Regional Hearing Clerk. Upon filing, EPA will transmit a copy of the filed CAFO to Respondent.

For Federal Cartridge Company:

900 Bob Ehlen Drive
Anoka, Minnesota 55303



Jeff Ehrich, Vice President and Secretary
Federal Cartridge Company

8-26-2024
Date

United States Environmental Protection Agency, Complainant

Michael D. Harris
Division Director
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency, Region 5

**Consent Agreement and Final Order
In the Matter of: Federal Cartridge Company
Docket No. CAA-2024-05-0058**

Final Order

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

Date

Ann L. Coyle
Regional Judicial Officer
U.S. Environmental Protection Agency
Region 5