



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

AUG 19 2014

REPLY TO THE ATTENTION OF:

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Larry C. Boswell, Plant Manager
Johnson Controls Battery Group, Inc.
300 South Glengarry Drive
Geneva, Illinois 60134

Re: In the Matter of: Johnson Controls Battery Group, Inc.
Docket No. CAA-05-2014-0043

Dear Mr. Boswell:

Enclosed is a file-stamped Consent Agreement and Final Order (CAFO) which resolves Johnson Controls Battery Group, Inc., docket no CAA-05-2014-0043. As indicated by the filing stamp on its first page, we filed the CAFO with the Regional Hearing Clerk on AUG 19 2014.

Pursuant to paragraph 31 of the CAFO, Johnson Controls Battery Group, Inc. must pay the civil penalty within 30 days of AUG 19 2014. Your check must display the case name and case docket number CAA-05-2014-0043.

Please direct any questions regarding this case to Andre Daugavietis, Associate Regional Counsel, at (312) 886-6663.

Sincerely,

A handwritten signature in black ink, appearing to read "Nathan A. Frank".

Nathan A. Frank
Air Enforcement and Compliance Assurance Section,
(IL/IN)

Enclosure

cc: Regional Hearing Clerk/E-19J
Regional Judicial Officer/C-14J
Andre Daugavietis/C-14J
Eric Jones, IEPA



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:)	Docket No. CAA-05-2014-0043
)	
Johnson Controls Battery Group, Inc.)	Proceeding to Assess a Civil Penalty
Geneva, Illinois)	Under Section 113(d) of the Clean Air Act
)	42 U.S.C. § 7413(d)
Respondent.)	
_____)	

Consent Agreement and Final Order

Preliminary Statement

1. This is an administrative action commenced and concluded under Section 113(d) of the Clean Air Act (the Act), 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 Air and Radiation Division, U.S. Environmental Protection Agency (EPA), Region 5.

3. Respondent is Johnson Controls Battery Group, Inc., a corporation doing business in Illinois. Respondent owns and/or operates a facility located at 300 South Glengarry Drive, Geneva, Illinois 60134 (the Facility).

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.

Jurisdiction and Waiver of Right to Hearing

7. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations or legal conclusions in this CAFO.

8. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO and its right to appeal this CAFO.

Applicable Statutory and Regulatory Background

The Illinois State Implementation Plan

9. Section 110(a)(1) of the CAA, 42 U.S.C. § 7410(a)(1), requires each state to adopt and submit to the EPA for approval a SIP that provides for the implementation, maintenance, and enforcement of the National Ambient Air Quality Standards (NAAQS). Under Section 110(a) of the CAA, 42 U.S.C. § 7410(a), each SIP must include a permit program to regulate the modification and construction of any stationary source of air pollution as necessary to assure that NAAQS are achieved. Pursuant to Section 113(a) and (b) of the CAA, 42 U.S.C. § 7413(a) and (b), upon EPA approval, SIP requirements are federally enforceable under Section 113.

10. Under 40 C.F.R. § 52.23, any permit limitation or condition contained within a permit issued under an EPA-approved program that is incorporated in a SIP, is a requirement of the SIP, and is federally enforceable under Section 113, 42 U.S.C. § 7413.

11. 35 Illinois Administrative Code (IAC) 201.143 provides that no person shall cause or allow the operation of any new emission source or new air pollution control equipment of a type for which a construction permit is required by paragraph (a) of this Rule 103 [Section

201.142] without first obtaining an operating permit from the Agency, except for such testing operations as may be authorized by the construction permit. Applications for operating permits shall be made at such times and contain such information (in addition to the information required by paragraph (b)(3) of this Rule 103 [Section 201.157]) as shall be specified in the construction permit.

Illinois Environmental Protection Agency Federally Enforceable State Operating Program

Permits

12. EPA promulgated approval of the Illinois Federally Enforceable State Operating Program (FESOP) program on December 17, 1992. See 57 Fed. Reg. 59928. Illinois' FESOP program became effective on February 16, 1993.

Illinois Environmental Protection Agency Construction Permits

13. EPA promulgated approval of IAC Part 201, "Permits and General Conditions," as part of the federally enforceable SIP for the State of Illinois on May 31, 1972. See 37 Fed. Reg. 10862. Since then, EPA has approved several revisions of 35 IAC Part 201 into the federally enforceable SIP.

14. 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.

15. 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.

Factual Allegations and Alleged Violations

16. Respondent owns and operates the Facility and has owned and operated the Facility at all times relevant to this CAFO.
17. Respondent manufactures lead-acid batteries at the Facility.
18. On June 20, 2012, the EPA issued an information request to the Respondent pursuant to Section 114 of the CAA, 42 U.S.C. § 7414 (the information request).
19. Respondent complied with the information request and provided a response on August 31, 2012.
20. The IEPA issued a Construction Permit, Application No.:10040007, to the Facility on August 26, 2010.
 - a. The purpose of this permit was to allow the construction of the emission source, Chemset Chamber 9 and to modify the air pollution control equipment associated with Barton 1 and 2.
 - b. Condition 1.e of the permit states that Chemset Chamber 9 and the Barton System lead pots may be operated for a period of 180 days after initial startup under this Construction Permit.
 - c. Condition 9.b of permit contains lead emission limits for Barton 1 and 2.
 - d. The permit provides that Barton 1 and 2 has lead emission limits of 0.00176 lbs/hr and 0.00769 tons/yr.
21. The IEPA issued a Construction Permit, Application No.:10110009, to the Facility on January 27, 2011.
 - a. The purpose of this permit was to allow the construction of the emission source, Chemset Chamber 10.
 - b. Condition 1.d of the permit states that Chemset Chamber 10 may be operated for a period of 180 days after initial startup under this Construction Permit.
22. The Illinois Environmental Protection Agency (IEPA) issued a FESOP Permit, Application No.: 73010036 (the FESOP Permit), to the Facility on April 20, 2011.

- a. Pursuant to Condition 1.c of the FESOP Permit, the permit supersedes all operating permits for the Facility.
 - b. Condition 10.a of the permit contains lead emission limits for the Barton System 1 Melt Pot & Barton System 2 Melt Pot (Barton 1 and 2) emission unit.
 - c. The permit provides that Barton 1 and 2 shall not exceed lead emission limits of 0.0000401 grains/dry standard cubic foot (gr/dscf), 0.00176 pounds/hour (lbs/hr), and 0.00769 tons/year (tons/yr).
23. The IEPA issued a Construction Permit, Application No.:11030029, to the Facility on July 20, 2011 and revised this permit on November 15, 2011.
- a. The permit allowed for the installation of Chemset Chamber 10 and modifications associated with air pollution control equipment.
 - b. Condition 1.d of the permit states that Chemset Chamber 10 may be operated for a period of 180 days after initial startup under this Construction Permit.
 - c. Condition 1.d of the permit contains a typographical error in referencing the modifications associated with the Construction Permit issued on January 27, 2011, rather than the modifications included in this permit.
24. Respondent performed a stack test at the Facility in October 2011.
- a. The stack test included those new emission units and Facility modifications from the Construction Permits issued on August 26, 2010, January 27, 2011, and July 20, 2011 (revised November 15, 2011).
 - b. The test identified a lead emission rate of 0.000045 gr/dscf and 0.0034 pounds/hour at Barton 1 and 2.
25. Respondent submitted a letter to IEPA, dated August 30, 2012, stating that the Facility operated with lead emissions exceeding permitted limits from the October 12, 2011 stack test for a six hour period during the stack test of Barton 1 and 2. The letter also states that Barton 1 and 2 was shut down on August 24, 2012, until the root cause of the emission exceedance could be verified.

26. Respondent did not incorporate the Construction Permits issued on August 26, 2010, January 27, 2011, and November 15, 2011 into an operating permit within 180 days of initial startup.

27. Respondent violated FESOP Permit (dated April 20, 2011) Condition 10.a for the emission rate of lead from Barton 1 and 2 on October 12, 2011, and for a period that may have extended from October 12, 2011 through August 24, 2012.

28. Respondent violated the Construction Permit (dated August 26, 2010) Condition 9.b for the emission rate of lead from Barton 1 and 2 on October 12, 2011, and for a period that may have extended from October 12, 2011 through August 24, 2012. The excess lead emissions resulting from Barton 1 and 2 amounted to 0.01 lbs on October 12, 2011, and on a worst case basis may have amounted to up to a total of 12.48 lbs for the period of October 12, 2011 through August 24, 2012.

29. Respondent violated 35 IAC 201.143 by failing to obtain (or submit an application for) an operating permit that incorporates the modifications and/or improvements included in the Construction Permits issued on August 26, 2010, January 27, 2011, and November 15, 2011 within 180 days of initial startup.

Civil Penalty

30. Based on analysis of the factors specified in Section 113(e) of the Act, 42 U.S.C. § 7413(e), the facts of this case, Respondent's cooperation, self-reporting to IEPA, prompt return to compliance and agreement to complete the Supplemental Environmental Project set forth below, Complainant has determined that an appropriate civil penalty to settle this action is \$42,135.

31. Within 30 days after the effective date of this CAFO, Respondent must pay a \$42,135 civil penalty by sending a cashier's or certified check, payable to "Treasurer, United States of America," to:

U.S. EPA
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, Missouri 63197-9000

32. Respondent must send a notice of payment that states Respondent's name, the docket number of this CAFO and the billing document number to the Compliance Tracker, Air Enforcement and Compliance Assurance Branch and to Robert Thompson at the following addresses when it pays the penalty:

Attn: Compliance Tracker, (AE-17J)
Air Enforcement and Compliance Assurance Branch
Air and Radiation Division
U.S. Environmental Protection Agency, Region 5
77 W. Jackson Boulevard
Chicago, Illinois 60604

Robert Thompson (C-14J)
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 5
77 W. Jackson Boulevard
Chicago, Illinois 60604

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

34. If Respondent does not timely pay 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 Act, 42 U.S.C. § 7413(d)(5). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

35. 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).

Supplemental Environmental Project

36. Respondent must complete a supplemental environmental project (SEP) at the Facility designed to protect the environment and public health by voluntarily reducing allowable lead emissions from the emission unit Barton 1 and 2.

37. Respondent must complete the SEP as described below:

- a. Within 30 calendar days of the effective date of this CAFO, Respondent must apply to the IEPA for a construction permit for the construction and operation of a pulse-jet primary baghouse with high efficiency particulate absorption (HEPA) secondary filters (the pulse-jet baghouse with HEPA filters will be referred to as the "new baghouse system). The HEPA filters will have a manufacturer-specified removal efficiency of 99.7% for particles sizes of 0.3 micrometers and greater. The lead emission rate of the new baghouse system will be limited by permit limits to 0.00171 lbs/hr and 0.00746 tons/yr. These limits will be incorporated into the construction permit application. Respondent must submit a copy of its construction permit application to EPA within seven (7) calendar days of submitting the application to IEPA.
- b. Within 30 calendar days of obtaining a final construction permit from IEPA, Respondent must place a firm order for the new baghouse system. Respondent must submit a copy of the final construction permit to EPA within 7 calendar days of receipt.
- c. Within 220 calendar days of obtaining a final construction permit from IEPA, Respondent must complete installation of the new baghouse system and conduct a performance test to determine the lead emission rate in

pounds per hour. Respondent shall submit a copy of the performance testing plan to EPA and Illinois EPA at least 60 calendar days prior to the test date. A final performance test report shall be submitted to EPA within 30 days of completion of the test.

- d. Within 60 calendar days of the completion of the performance test, Respondent will submit a permit application to IEPA to include the new baghouse system with lead emission limits from paragraph 35.a into the Facility's FESOP.

38. Respondent agrees to spend at least \$240,000 to implement the SEP.

39. Respondent certifies as follows:

I certify that Johnson Controls Battery Group, Inc. is not required to perform or develop the SEP by any law, regulation, order, or agreement or as injunctive relief as of the date that I am signing this CAFO. I further certify that Johnson Controls Battery Group, Inc. has not received, and is not negotiating to receive, credit for the SEP in any other enforcement action.

I certify that Johnson Controls Battery Group, Inc. is not a party to any open federal financial assistance transaction that is funding or could be used to fund the same activity as the SEP. I further certify that, to the best of my knowledge and belief after reasonable inquiry, there is no such open federal financial transaction that is funding or could be used to fund the same activity as the SEP, nor has the same activity been described in an unsuccessful federal financial assistance transaction proposal submitted to EPA within two years of the date that I am signing this CAFO (unless the project was barred from funding as statutorily ineligible). For purposes of this certification, the term "open federal financial assistance transaction" refers to a grant, cooperative agreement, loan, federally-guaranteed loan guarantee or other mechanism for providing federal financial assistance whose performance period has not expired.

40. EPA may inspect the Facility at any time to monitor Respondent's compliance with this CAFO's SEP requirements.

41. Respondent must submit a SEP completion report to EPA by no later than 60 days from completion of the SEP. This report must contain the following information:

- a. Detailed description of the SEP as completed;

- b. Description of any operating problems and the actions taken to correct the problems;
- c. Itemized cost of goods and services used to complete the SEP, documented by copies of invoices, purchase orders or canceled checks that specifically identify and itemize the individual cost of the goods and services;
- d. Certification that Respondent has completed the SEP in compliance with this CAFO., or a statement of any known deviations from the SEP requirements; and
- e. Description of the environmental and public health benefits resulting from the SEP (quantify the benefits and pollution reductions, if feasible).

42. Respondent must submit all notices and reports required by this CAFO by first class mail to the Compliance Tracker in the Air Enforcement and Compliance Assurance Branch at the address provided in paragraph 30, above.

43. In each report that Respondent submits as provided by this CAFO, it must certify that the report is true and complete by including the following statement signed by one of its officers or an authorized plant manager:

I certify that I am familiar with the information in this document and that, based on my inquiry of those individuals responsible for obtaining the information, it is true and complete to the best of my knowledge. I know that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.

44. Following receipt of the SEP completion report described in paragraph 39, above, EPA must notify Respondent in writing that:

- a. It has satisfactorily completed the SEP and the SEP report;
- b. There are deficiencies in the SEP as completed or in the SEP report and EPA will give Respondent 30 days to correct the deficiencies; or
- c. It has not satisfactorily completed the SEP or the SEP report and EPA will seek stipulated penalties under paragraph 44.

45. If EPA exercises option b, above, Respondent may object in writing to the deficiency notice within 10 days of receiving the notice. The parties will have 30 days from EPA's receipt of Respondent's objection to reach an agreement. If the parties cannot reach an agreement, EPA will give Respondent a written decision on its objection. If Respondent does not complete the SEP as required by this CAFO, Respondent will pay stipulated penalties to the United States under paragraph 44, below.

46. If Respondent violates any requirement of this CAFO relating to the SEP, Respondent must pay stipulated penalties to the United States as follows:

- a. Except as provided in subparagraph b, below, if Respondent did not complete the SEP satisfactorily according to the requirements of this CAFO, including the schedule in paragraph 35, Respondent must pay a stipulated penalty of \$100,000.
- b. If Respondent did not complete the SEP satisfactorily, but EPA determines that Respondent made good faith and timely efforts to complete the SEP and the Respondent has certified, with supporting documents, that it spent at least 90 percent of the amount set forth in paragraph 61, Respondent will not be liable for any stipulated penalty under subparagraph a, above.
- c. If Respondent completed the SEP satisfactorily, but spent less than 90 percent of the amount set forth in paragraph 36, Respondent must pay a stipulated penalty of \$25,000.
- d. If Respondent did not timely submit the SEP completion report or any other report required by paragraph 35, Respondent must pay stipulated penalties in the following amounts for each day after the report was due until it submits the report:

<u>Penalty per violation per day</u>	<u>Period of violation</u>
\$50	1 st through 14 th day
\$100	15 th through 30 th day
\$200	31 st day and beyond

47. EPA's determinations of whether Respondent satisfactorily completed the SEP and whether Respondent made good faith and timely efforts to complete the SEP will bind Respondent.

48. Respondent must pay any stipulated penalties within 15 days of receiving EPA's written demand for the penalties. Respondent will use the method of payment specified in paragraph 29, above, and will pay interest and nonpayment penalties on any overdue amounts.

49. Any public statement that Respondent makes referring to the SEP must include the following language, "Johnson Controls Battery Group, Inc. undertook this project under the settlement of the United States Environmental Protection Agency's enforcement action against Johnson Controls Battery Group, Inc. for violations of the Clean Air Act."

50. If an event occurs which causes or may cause a delay in completing the SEP as required by this CAFO:

- a. Respondent must notify EPA in writing within 10 days after learning of an event which caused or may cause a delay in completing the SEP. The notice must describe the anticipated length of the delay, its cause(s), Respondent's past and proposed actions to prevent or minimize the delay and a schedule to carry out those actions. Respondent must take all reasonable actions to avoid or minimize any delay. If Respondent fails to notify EPA according to this paragraph, Respondent will not receive an extension of time to complete the SEP.
- b. If the parties agree that circumstances beyond the control of Respondent caused or may cause a delay in completing the SEP, the parties will stipulate to an extension of time no longer than the period of delay.
- c. If EPA does not agree that circumstances beyond the control of Respondent caused or may cause a delay in completing the SEP, EPA will notify Respondent in writing of its decision and any delays in completing the SEP will not be excused.
- d. Respondent has the burden of proving that circumstances beyond its control caused or may cause a delay in completing the SEP. Increased costs for completing the SEP will not be a basis for an extension of time under subparagraph b, above. Delay in achieving an interim step will not necessarily justify or excuse delay in achieving subsequent steps.

51. For federal income tax purposes, Respondent will neither capitalize into inventory or basis, nor deduct any cost or expenditures incurred in performing the SEP.

General Provisions

52. This CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged in this CAFO.

53. The CAFO does not affect the rights of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violation of law.

54. This CAFO does not affect Respondent's responsibility to comply with the Act and other applicable federal, state and local laws. Except as provided in paragraph 52, above, compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws administered by EPA.

55. Respondent certifies that, based upon information and belief formed after reasonable inquiry, it is complying fully with the lead emission limits at emission unit Barton 1 and 2 in the FESOP Permit.

56. This CAFO constitutes an "enforcement response" as that term is used in EPA's Clean Air Act Stationary Civil Penalty Policy to determine Respondent's "full compliance history" under Section 113(e) of the Act, 42 U.S.C. § 7413(e).

57. The terms of this CAFO bind Respondent, its successors and assigns.

58. Each person signing this consent agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

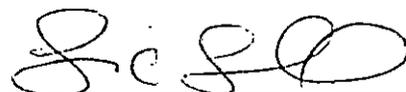
59. Each party agrees to bear its own costs and attorneys fees in this action.

60. This CAFO constitutes the entire agreement between the parties.

[Signature page follows.]

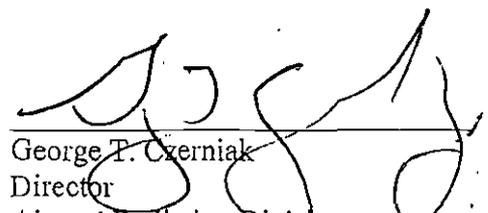
Johnson Controls Battery Group, Inc.,
Respondent

8-7-14
Date


Larry C. Boswell
Plant Manager - Geneva
Johnson Controls Battery Group, Inc.

United States Environmental Protection Agency, Complainant

8/15/14
Date

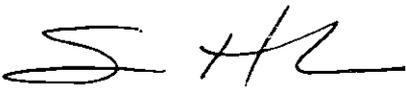

George T. Ozerniak
Director
Air and Radiation Division
U.S. Environmental Protection Agency
Region 5

Consent Agreement and Final Order
In the Matter of: Johnson Controls Battery Group, Inc.
Docket No. CAA-05-2014-0043

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.

8-18-2014
Date



Susan Hedman
Regional Administrator
U.S. Environmental Protection Agency
Region 5

Consent Agreement and Final Order
In the Matter of: Johnson Controls Battery Group, Inc.
Docket No. CAA-05-2014-0043

Certificate of Service

I certify that I filed the original and one copy of the Consent Agreement and Final Order (CAFO), docket number CAA 05 2014 0043 with the Regional Hearing Clerk (E-19J), United States Environmental Protection Agency, Region 5, 77 W. Jackson Boulevard, Chicago, Illinois 60604, and that I mailed the second original copy to Respondent by first-class, postage prepaid, certified mail, return receipt requested, by placing it in the custody of the United States Postal Service addressed as follows:

Larry C. Boswell, Plant Manager
Johnson Controls Battery Group, Inc.
300 South Glengarry Drive
Geneva, Illinois 60134

I certify that I delivered a correct copy of the CAFO by intra-office mail, addressed as follows:

Regional Judicial Officer (C-14J)
U.S. Environmental Protection Agency
77 W. Jackson Boulevard
Chicago, Illinois 60604

I also certify that I mailed a correct copy of the CAFO by first-class mail to:

Eric Jones, Manager
Bureau of Air, Compliance Unit
Illinois Environmental Protection Agency
P.O. Box 19506
Springfield, Illinois 62794

On the 19 day of August 2014.


Loretta Shaffer, Admin. Prog. Asst.
AECAB, PAS

CERTIFIED MAIL RECEIPT NUMBER:

7011 1150 0000 2639 3212