

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2**

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In the Matter of

Alcoa Inc.,

**CONSENT AGREEMENT/
FINAL ORDER**

Respondent.

Docket No. EPCRA-02-2019-4202

Proceeding Under Section 325 (c)
of Title III of the Superfund
Amendments and Reauthorization Act

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This administrative proceeding for the assessment of a civil penalty is being commenced pursuant to Section 325 of the Emergency Planning and Community Right to Know Act, 42 U.S.C. § 11045 (“EPCRA” or the “Act”). The United States Environmental Protection Agency (“EPA” or “Agency”), under authority of EPCRA, has promulgated regulations, codified at 40 C.F.R. Part 372, that govern, *inter alia*, the reporting of manufacturing, processing and otherwise using “toxic chemicals” (as defined in 40 C.F.R. § 372.3). Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), provides, in part, that “[a]ny person...who violates a provision of section...11023 of this title [Section 313 of EPCRA] shall be liable to the United States for a civil penalty....”

Pursuant to Section 22.13(b) of the revised Consolidated Rules of Practice, 40 C.F.R. § 22.13(b), where parties agree to settlement of one or more causes of action before the filing of a Complaint, a proceeding may be simultaneously commenced and concluded by the issuance of a Consent Agreement and Final Order (“CA/FO”) pursuant to 40 C.F.R. §§ 22.18(b)(2) and (3). This administrative proceeding is simultaneously being commenced and concluded pursuant to said provisions of 40 C.F.R. § 22.18(b).

The parties agree that settling this matter by entering into this consent agreement pursuant to 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3) is an appropriate means of resolving specified claims against Alcoa Inc. (“Alcoa”) without further litigation. To that end, the parties have met and discussed settlement. No adjudicated findings of fact or conclusions of law have been made in either a judicial or administrative forum. EPA’s Findings of Fact and Conclusions of Law are based on information of which EPA, Region 2 was aware as of the date this CA/FO is executed.

Complainant in this proceeding is the Director of the Division of Enforcement and Compliance Assistance (“Complainant”) of EPA, Region 2, and Complainant has been duly delegated the authority to commence this proceeding.

U.S. Environmental Protection Agency-Region 2
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FINDINGS OF FACT

1. Alcoa Inc. was a Pennsylvania corporation with a corporate office situated at 201 Isabella Street, Pittsburgh, PA 15212.
2. For a period including calendar years 2013 through 2015, Alcoa owned and operated a smelting and casting facility located at 45 County Road 42, Massena, NY 13662 (“Massena Facility”).
3. At the Massena facility, Alcoa manufactured cold drawn rod/bar, extruded forge stock and extruded rod used primarily for the aerospace, defense and oil and gas industries. The Massena Facility is an establishment with a primary North American Industry Classification System (NAICS) subsector or industry code listed in 40 C.F.R. § 372.23(b) (subsector code or industry code 331 [“Primary Metal Manufacturing”]).
4. In each of calendar years 2013, 2014, and 2015, the Massena Facility had more than 50 full-time employees. In each of these three years, Alcoa had gross annual sales of over \$10 million.
5. As part of its manufacturing process, Alcoa processed more than 100 pounds of Lead Compounds at the Massena Facility in each of calendar years 2013, 2014, and 2015.
6. On or about November 1, 2016, Alcoa changed its name to Arconic Inc. (“Arconic”) and spun off Alcoa Corp. (“AC”), an independent and separate corporate entity. As a result of this reorganization, Arconic is the owner and operator of the aluminum extrusion operations at the Massena facility, and Alcoa Corporation is the operator of the aluminum smelting and casting operations co-located at the Massena facility.
7. On April 10, 2017, EPA requested information from Arconic regarding the Massena Facility’s past compliance with Section 313 of EPCRA and its filings of Toxic Chemical Release Inventory (TRI) Form A or Form R reports.
8. Upon review of the documents submitted by Arconic, and follow-up email communications with the Massena facility, EPA determined that Alcoa had failed to submit Form A or Form R reports for Lead Compounds for calendar years 2013, 2014, and 2015.
9. Alcoa had instead timely submitted Form R reports for Lead and had done so incorrectly. This was an error that resulted from the use of parent metal analytical data and emission factors for preparing release estimates for the Forms R.
10. As a result, Arconic withdrew the Lead TRI reports submitted for the Massena facility for calendar years 2013, 2014 and 2015.
11. On December 4, 2017, Arconic submitted accurate and complete TRI reports for the Lead Compounds processed at the Massena facility in calendar years 2013, 2014 and 2015.

CONCLUSIONS OF LAW

1. This is an action pursuant to Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), to assess a civil penalty against Respondent for having violated a requirement of Section 313(a) of EPCRA, 42 U.S.C. § 11023(a) and of 40 C.F.R. § 372.30. This tribunal is vested with jurisdiction over this administrative proceeding pursuant to Section 325(c)(4) of EPCRA, 42 U.S.C. § 11045(c)(4), and 40 C.F.R. § 22.1(a)(8).

2. Section 325(c)(1) of EPCRA, 42 U.S.C. § 11045(c)(1), provides, in part, “Any person...who violates any requirement of section...11023 of this title [Section 313 of EPCRA] shall be liable to the United States for a civil penalty....”

3. Section 325(c)(3) of EPCRA, 42 U.S.C. § 11045(c)(3), provides, “Each day a violation described in paragraph (1) [Section 325(c)(1), 42 U.S.C. § 11045(c)(1)]...continues shall, for purposes of this subsection, constitute a separate violation.”

4. EPA promulgated the regulations set forth in 40 C.F.R. Part 372 pursuant to Sections 313 and 328 of EPCRA, 42 U.S.C. §§ 11023 and 11048, respectively.

5. Pursuant to Section 313(a) of EPCRA, 42 U.S.C. § 11023(a), and 40 C.F.R. §§ 372.22 and 372.30, owners or operators of a facility subject to the requirements of Section 313(b) of EPCRA, 42 U.S.C. § 11023(b), and 40 C.F.R. § 372.22 are required to submit annually, no later than July 1st of each year, accurate reports for each toxic chemical (defined under 40 C.F.R. § 372.3 to include a chemical listed in 40 C.F.R. § 372.65) that was “manufactured,” “processed” or “otherwise used” (each such term defined in 40 C.F.R. § 372.3) during the preceding calendar year in quantities exceeding the established toxic chemical threshold levels as listed in 40 C.F.R. § 372.25, 372.27 or 372.28. The information, to be reported on the prescribed EPA form (40 C.F.R. § 372.30(a); hereinafter “Form R”) must be submitted to the Administrator of EPA and the state in which the toxic chemicals were manufactured, processed or otherwise used.

6. Each of the following is a “requirement” within the meaning of Section 325(c)(1) of EPCRA, 42 U.S.C. § 11045(c)(1): (a) Section 313(a) of EPCRA, 42 U.S.C. § 11025(a); (b) 40 C.F.R. § 372.22 and (c) 40 C.F.R. § 372.30.

7. For the period including each of calendar years 2013 through 2015, Alcoa was a “person” as defined in Section 329(7) of EPCRA, 42 U.S.C. § 11049(7), and in 40 C.F.R. § 372.3.

8. For the period including each of calendar years 2013 through 2015, Alcoa was subject to the reporting requirements set forth in Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. §§ 372.22 and 372.30.

9. For the period including each of calendar years 2013 through 2015, the activity threshold amount for reporting Lead Compounds was, pursuant to 40 C.F.R. § 372.28(a)(1), 100 pounds.

10. Pursuant to each of Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. § 372.30, Alcoa was required to submit to EPA and to the State of New York a complete and correct Form R for the following:

- (a) For the Lead Compounds processed at the Massena Facility in calendar year 2013, a completed Form R by July 1, 2014;
- (b) For the Lead Compounds processed at the Massena Facility in calendar year 2014, a completed Form R by July 1, 2015; and
- (c) For the Lead Compounds processed at the Massena Facility in calendar year 2015, a completed Form R by July 1, 2016.

11. Alcoa failed to submit complete and correct Forms R for the Lead Compounds processed at the Massena Facility in calendar years 2013, 2014, and 2015 by their regulatory due dates.

12. Each of Alcoa's aforementioned failures constitutes, for purposes Section 325(c) of EPCRA, 42 U.S.C. § 11045(c) a separate and distinct violation of a requirement of: (a) Section 313 of EPCRA, 42 U.S.C. § 11023; (b) Section 325(c)(3) of EPCRA, 42 U.S.C. § 11045(c)(3); (c) 40 C.F.R. § 372.22; and (d) 40 C.F.R. § 372.30.

13. For each of Alcoa's aforementioned violations, Arconic, as the corporate successor to Alcoa, is liable to the United States pursuant to Section 325(c)(1) of EPCRA and Section 325(c)(3) of EPCRA, 42 U.S.C. § 11045(c)(1) and 42 U.S.C. 11045(c)(3), respectively.

CONSENT AGREEMENT

Based upon the foregoing, and pursuant to Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), and 40 C.F.R. § 22.18 of the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, 40 C.F.R. Part 22," it is hereby agreed by and between Complainant and Arconic, the corporate successor to Alcoa, and voluntarily accepted by Arconic, the corporate successor to Alcoa, that, for purposes of this Consent Agreement and in the interest of settling this matter expeditiously without the time, expense or uncertainty of a formal adjudicatory hearing on the merits, it: **(a)** admits EPA has jurisdiction under EPCRA to enforce the provisions of the Act and the regulations promulgated thereunder; **(b)** neither admits nor denies the specific factual allegations or legal conclusions contained in EPA's Findings of Fact, above; **(c)** consents to the assessment of the civil penalty as set forth below; **(d)** consents to the issuance of the Final Order accompanying this Consent Agreement; and **(e)** waives any right it might possess to seek or obtain judicial review of, or otherwise contest, said Final Order.

It is further hereby agreed by and between Complainant and Arconic, and voluntarily accepted by Arconic, that there shall be compliance with the following terms and conditions:

1. Arconic hereby certifies, to the best of its knowledge, that with regard to the operations at the Massena Facility it is presently in full compliance with the applicable requirements of Section 313 of EPCRA, 42 U.S.C. § 11023, and of 40 C.F.R. Part 372.

2. Arconic shall pay a civil penalty to EPA in the amount of **FORTY-FIVE THOUSAND DOLLARS (\$45,000)** for the violations EPA has alleged in the "Findings of Fact" and "Conclusions of Law" sections, above. Said amount must be received by EPA (at the address or account of EPA specified in paragraph 3, below) within thirty (30) days¹ of the date the Regional Administrator of EPA, Region 2, signs the Final Order accompanying this Consent Agreement (said date hereinafter referred to as the "due date").

3. Payment in accordance with the terms and schedule of this Consent Agreement shall be made by cashier's check, certified check or electronically via Fedwire. If payment is made by cashier's check or by certified check, each such check shall be made payable to the "**Treasurer, United States of America,**" and shall be identified with a notation thereon listing the following: ***In re Alcoa Inc., Docket Number EPCRA-02-2019-4202.*** If payment is made by either form of check, such payment shall be mailed to the following address:

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

Alternatively, if Arconic chooses to make electronic payment via Fedwire, then the following information is to be provided to the remitter bank when such payment is made:

- a. Amount of Payment;
- b. SWIFT address: **FRNYUS33, 33 Liberty Street, New York, NY 10045;**
- c. Account Code for Federal Reserve Bank of New York receiving payment: **68010727;**
- d. Federal Reserve Bank of New York ABA routing number: **021030004;**
- e. Field Tag 4200 of the Fedwire message should read: **D 68010727 Environmental Protection Agency;**
- f. Name: **Alcoa Inc.;** and
- g. Case docket number: **EPCRA-02-2019-4202.**

4. Failure to pay the specified amount in full within the time period set forth above may result in referral of this matter to the United States Department of Justice or the United States Department of the Treasury for collection of the amount due (including late payments) and stipulated penalties.

Furthermore, if the required payment is not received on or before its due date in accordance with the terms of this document, interest shall be assessed at the annual rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717 on the overdue amount from the date payment was to have been made through the date payment is received. In addition, a late payment handling charge of \$15.00 will be assessed for each thirty (30) day period or any portion thereof, following the date payment was to have been received, in which payment of the amount remains in arrears. In addition, a 6% per annum

¹ For purposes of this CA/FO, days shall mean calendar days.

penalty will be applied to any principal amount that has not been received by the EPA within ninety (90) days of the due date.

5. The civil penalty provided for in this section (including any payment for interest and late payment handling charge that have become due) constitutes a penalty within the meaning of 26 U.S.C. § 162(f) and does not constitute a deductible expenditure for purposes of federal or state law.

6. Arconic consents to service of the CA/FO upon it by an employee of EPA other than the Regional Hearing Clerk of EPA, Region 2. Receipt of the fully executed CA/FO by said designated representative shall constitute Respondent's receipt and acceptance of said CA/FO.

7. Any responses, documentation, and other communications submitted in connection with this Consent Agreement shall be sent to:

James Crossmon
U.S. Environmental Protection Agency – Region 2
Pesticides & Toxic Substances Branch
Building 205
2890 Woodbridge Avenue
Edison, NJ 08837

and

Gary H. Nurkin
Office of Regional Counsel
US Environmental Protection Agency
290 Broadway, 16th floor
New York, NY 10007-1866

Unless the above-named EPA contacts are later advised otherwise in writing, EPA shall address any future written communications related to this matter, including the fully-executed CA/FO and any correspondence related to payment of the penalty, to Arconic at the following address:

Emily Lewis, Esq.
Counsel for Respondent
Arconic Inc. Legal Department
201 Isabella Street
Pittsburgh, PA 15212

8. This CA/FO is not intended, and shall not be construed, to supersede, pre-empt, negate, invalidate or otherwise affect Arconic's obligation to comply with all applicable federal, state and local law and regulations, nor is it intended or to be construed to be a ruling on or determination of any issue related to any federal, state or local permit. Payment of the civil penalty in full as provided herein,

together with any late payment for interest, shall not waive, extinguish, or otherwise affect Arconic's obligation to comply with all applicable provisions of EPCRA and the regulations promulgated thereunder at the Massena Facility.

9. Full payment of the penalty amount set forth above (*i.e.* \$45,000) in accordance with the terms herein, as well as any interest or late payment handling charges that accrue, shall only resolve Arconic's liability for federal civil penalties for the facts and violations described in the above Findings of Fact and Conclusions of Law. Notwithstanding the above, nothing herein shall affect the authority of EPA or the United States on behalf of EPA to pursue appropriate injunctive or otherwise seek equitable relief or criminal sanctions for any violation(s) of law resulting from or pertaining to toxic chemical release reporting from the Massena Facility.

10. Pursuant to 40 C.F.R. § 22.18(b)(2), in entering this Consent Agreement, Arconic waives any right it might possess to seek or obtain judicial review under EPCRA, the Administrative Procedure Act, 5 U.S.C. §§ 701 *et seq.*, or other law that might be applicable. Arconic, in entering into this Consent Agreement, waives any right it might have under Section 325 of EPCRA, 42 U.S.C. § 11045, or other applicable law otherwise to seek or obtain an administrative or judicial hearing on the claims set forth in or arising from the above Findings of Fact or Conclusions of Law or on the terms and conditions set forth in this Consent Agreement.

11. This Consent Agreement, and any provision herein, shall not be construed as an admission of liability in any adjudicatory or administrative proceeding, except in an action, suit or proceeding to enforce this Consent Agreement or any of its terms and conditions.

12. EPA's entering into this Consent Agreement is premised upon Arconic not having misrepresented or concealed any material fact in any of its written or oral representations to the Agency regarding its activities or actions or those of its corporate predecessor. If any material fact has been misrepresented or concealed, EPA may, at its discretion, declare this Consent Agreement and accompanying Final Order null and void *ab initio*.

13. Compliance with the requirements and provisions of this Consent Agreement shall not constitute a defense to any subsequent (*i.e.* following the filing of this document) action, suit or proceeding EPA (or the United States on behalf of EPA) may commence pursuant to any applicable federal statutory or regulatory provision for any violation(s) occurring after the date of the execution of the Final Order accompanying this Consent Agreement, or for any violation(s) of EPCRA statutory or regulatory requirements or prohibitions not alleged herein but that may have occurred prior to the date of the execution of the Final Order accompanying this Consent Agreement.

14. Each party shall bear its own costs and fees in connection with this proceeding.

15. This Consent Agreement shall be fully binding upon the parties and their officers, directors, employees, successors and/or assigns.

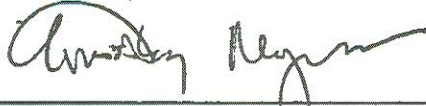
16. The signatory for Arconic certifies that: (a) he or she is duly and fully authorized to enter into and ratify this Consent Agreement and all the terms, conditions and requirements set forth in this

Consent Agreement, and (b) he or she is duly and fully authorized to bind Arconic to comply with and abide by all the terms, conditions and requirements of this Consent Agreement.

17. Pursuant to 40 C.F.R. § 22.31(b), the Final Order ratifying this Consent Agreement shall be effective as of the date of filing with the Regional Hearing Clerk of EPA, Region 2.

In the Matter of Alcoa Inc.,
Docket Number EPCRA-02-2019-4202

RESPONDENT: ARCONIC INC., FORMERLY KNOWN AS ALCOA INC.

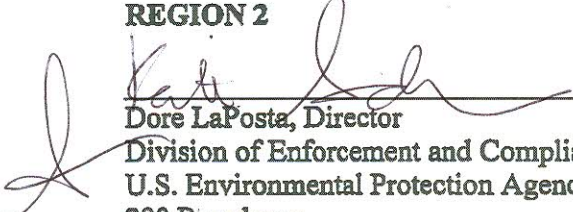
BY: 
Authorizing Signature

NAME: Timothy D Meyers
(PLEASE PRINT)

TITLE: Executive Vice President, Arcenic

DATE: March 15, 2019

**COMPLAINANT: UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2**

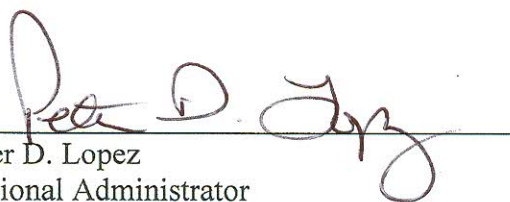

Dore LaPosta, Director
Division of Enforcement and Compliance Assistance
U.S. Environmental Protection Agency - Region 2
290 Broadway
New York, NY 10007-1866

DATE: MAR 18 2019

In the Matter of Alcoa Inc.,
Docket Number EPCRA-02-2019-4202

FINAL ORDER

The Regional Administrator of EPA, Region 2, concurs in the foregoing Consent Agreement in the case of *In the Matter of Alcoa Inc.*, bearing Docket Number EPCRA-02-2019-4202. The Consent Agreement, agreed to and entered into by the parties to this matter, is hereby ratified, incorporated herein, and issued as an Order ratified and incorporated into this Final Order. The effective date of this Order shall be the date of filing with the Regional Hearing Clerk of EPA, Region 2. 40 C.F.R. § 22.31(b).



Peter D. Lopez
Regional Administrator
U.S. Environmental Protection Agency
Region 2
290 Broadway
New York, NY 10007-1866

DATE: 4/19/19

In the Matter of Alcoa Inc.
Docket Number EPCRA 02-2019-4202

CERTIFICATE OF SERVICE

I certify that I have this day caused to be sent the foregoing fully executed CONSENT AGREEMENT and FINAL ORDER, bearing the above-referenced docket number, in the following manner to the respective addressees below:

Original and One Copy

By Hand:

Karen Maples
Regional Hearing Clerk
U.S. Environmental Protection Agency- Region 2
290 Broadway, 16th floor
New York, NY 10007-1866

Copy by Certified Mail,
Return Receipt Requested:

Emily Lewis, Esq.
Counsel for Respondent
Arconic Inc. Legal Department
201 Isabella Street
Pittsburgh, PA 15212

Dated: 4/22/2019


Yolanda Majette, WTS Branch Secretary