

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103

In the Matter of: :
: :
Colonial Metals, Inc. : U.S. EPA Docket No. RCRA-03-2020-0110
505 Blue Ball Road #20 : :
Elkton, Md 21921 : Proceeding under Section 3008(a) and (g) of the
: Resource Conservation and Recovery Act, as
Respondent. : amended, 42 U.S.C. § 6928(a) and (g)
: :
Colonial Metals, Inc. : :
505 Blue Ball Road #20 : :
Elkton, Md 21921 : :
: :
Facility. : :
: :

CONSENT AGREEMENT

PRELIMINARY STATEMENT

1. This Consent Agreement is entered into by the Director of the Enforcement and Compliance Assurance Division, U.S. Environmental Protection Agency, Region III (“Complainant”) and Colonial Metals, Inc. (“Respondent”) (collectively the “Parties”), pursuant to Section 3008(a) and (g) of the Resource Conservation and Recovery Act (“RCRA” or the “Act”), as amended, 42 U.S.C. § 6928(a) and (g), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation, Termination or Suspension of Permits (“Consolidated Rules of Practice”), 40 C.F.R. Part 22. Section 3008(a) of RCRA authorizes the Administrator of the U.S. Environmental Protection Agency (“EPA” or the “Agency”) to assess penalties and undertake other actions required by this Consent Agreement. The Administrator has delegated this authority to the Regional Administrator who, in turn, has delegated it to the Complainant. Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), authorizes the assessment of a civil monetary penalty against any person who violates any requirement of RCRA Subtitle C, EPA’s regulations thereunder, or any regulation of a state hazardous waste program which has been authorized by EPA. This Consent Agreement and the attached Final Order (hereinafter jointly referred to as the “Consent Agreement and Final Order”) resolve Complainant’s civil penalty claims against Respondent under RCRA for the violations alleged herein.

2. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice, Complainant hereby simultaneously commences and resolves this administrative proceeding.

JURISDICTION

3. The U.S. Environmental Protection Agency has jurisdiction over the above-captioned matter, as described in Paragraph 1, above.
4. Section 3008(a) of RCRA authorizes the Administrator of the U.S. Environmental Protection Agency (“EPA” or the “Agency”) to assess penalties and undertake other actions required by this Consent Agreement. The Administrator has delegated this authority to the Regional Administrator who, in turn, has delegated it to the Complainant. Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), authorizes the assessment of a civil monetary penalty against any person who violates any requirement of RCRA Subtitle C, EPA’s regulations thereunder, or any regulation of a state hazardous waste program which has been authorized by EPA. The Consolidated Rules of Practice govern this administrative adjudicatory proceeding pursuant to 40 C.F.R. § 22.1(a)(4).
5. On February 11, 1985, pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b), and 40 C.F.R. Part 271, Subpart A, the State of Maryland was granted final authorization to administer its hazardous waste management program regulations (“MdHWMR”) set forth at the Code of Maryland Regulations (“COMAR”), Title 10, Subtitle 51 et seq., in lieu of the federal hazardous waste management program established under RCRA Subtitle C, 42 U.S.C. §§ 6921-6939e. Through this final authorization, the provisions of the MdHWMR became requirements of RCRA Subtitle C and are, accordingly, enforceable by EPA on and after that date pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a). A revised Maryland hazardous waste management program set forth at COMAR, Title 26, Subtitle 13 was authorized by EPA effective on July 31, 2001, September 24, 2004, and on October 31, 2016, and, accordingly, the provisions of the revised MdHWMR are enforceable by EPA on and after those dates pursuant to § 3008(a) of RCRA, 42 U.S.C. § 6928(a). Maryland has not sought authorization to implement the federal universal waste regulations applicable to spent lamps. Therefore, in Maryland, waste lamps are regulated as hazardous waste, with the characteristic of toxicity for mercury (D009).
6. On December 20, 2018, EPA sent a letter to the State of Maryland, through the Maryland Department of the Environment (“MDE”), giving prior notice of this action in accordance with Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).

GENERAL PROVISIONS

7. For purposes of this proceeding only, Respondent admits the jurisdictional allegations set forth in this Consent Agreement and Final Order.

8. Except as provided in Paragraph 7, above, Respondent neither admits nor denies the specific factual allegations set forth in this Consent Agreement.
9. Respondent agrees not to contest the jurisdiction of EPA with respect to the execution of this Consent Agreement, the issuance of the attached Final Order, or the enforcement of this Consent Agreement and Final Order.
10. For purposes of this proceeding only, Respondent hereby expressly waives its right to contest the allegations set forth in this Consent Agreement and Final Order and waives its right to appeal the accompanying Final Order.
11. Respondent consents to the assessment of the civil penalty stated herein, to the issuance of any specified compliance order herein, and to any conditions specified herein.
12. Respondent shall bear its own costs and attorney's fees in connection with this proceeding.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

13. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice, Complainant alleges and adopts the Findings of Fact and Conclusions of Law set forth immediately below.
14. Respondent's facility is located at 505 Blue Ball Road #20, Elkton, Maryland 21921 ("Facility"). At the Facility, Respondent conducts a variety of chemical processes to manufacture approximately 700 different chemical compounds. A corporate predecessor of Respondent originally began operating the Facility in 1971. The Facility uses a variety of tanks and containers for performing chemical processes, as well as for the storage of raw materials and wastes. Respondent or its corporate predecessor has been notifying as a Large Quantity Generator ("LQG") of hazardous waste at this Facility (RCRA Number MDD054900287) through submission of biennial reports since 2010. Respondent is currently reporting as an LQG, with its most recent hazardous waste generator status notification being sent to MDE on January 29, 2018.
15. Respondent is a Corporation. Respondent's corporate predecessor was organized under the laws of the state of Maryland from 1971 to 2017. Following a stock purchase and merger, Respondent has been organized under the laws of the state of New York from 2017 to the present.
16. Respondent generates hazardous waste, including but not limited to a nickel sulfate solution generated during the rhenium refining process that is characteristic for corrosivity (EPA Hazardous Waste No. D002). Respondent utilizes two storage tanks, designated as A and B, to store the hazardous waste nickel sulfate. In addition, Respondent is a small quantity generator of hazardous waste lamps (EPA Hazardous Waste No. D009).

17. Respondent is now and was at the time of the violations alleged herein, a “person” as that term is defined in Section 1004(15) of RCRA, 42 U.S.C. § 6903(15), and COMAR 26.13.01.03B(61).
18. At all times relevant to the allegations set forth in this Consent Agreement, Respondent is, and has been, the “operator” and the “owner” of the Facility, as those terms are defined in COMAR 26.13.01.03.B(58) and (59), during the period of the violations alleged in this Consent Agreement. Respondent or its corporate predecessor has owned and operated the Facility since at least 1971.
19. As described below, at all times relevant to the allegations set forth in this Consent Agreement, Respondent is, and has been, a “generator” of “solid waste” and “hazardous waste” at the Facility, as these terms are defined in COMAR 26.13.01.03.B(29), (73) and (31).
20. At all times relevant to the allegations set forth in this Consent Agreement, and as described below, Respondent is, and has been, engaged in the “storage” of “solid waste” and “hazardous waste” in “containers” and “tanks” at the Facility, as those terms are defined in COMAR 26.13.01.03.B(76), (73), (31), (9) and (78).
21. At all times relevant to the allegations set forth in this Consent Agreement, Respondent’s Facility is, and has been, a hazardous waste storage “facility” as that term is defined in COMAR 26.13.01.03.B(23).
22. On May 17, 2018, two duly-authorized representatives of EPA (“EPA Inspectors”) conducted a Compliance Evaluation Inspection at the Facility (the “CEI” or “Inspection”), to examine the Respondent’s compliance with the federally-authorized MdHWMR and applicable federal hazardous waste regulations.
23. On June 25, 2019, EPA sent a Request to Show Cause and Request for Information (“Show Cause letter”) to Respondent advising it of EPA’s preliminary findings of violations at the Facility and offering the Respondent an opportunity to provide such additional information as it believed the Agency should review and consider before reaching any final conclusions as to the Respondent’s compliance with the MdHWMR and federal hazardous waste regulations at the Facility. Respondent provided additional information to EPA in response to the Show Cause letter.
24. On the basis of EPA’s findings during the Inspection, and Respondent’s response to EPA’s Show Cause letter, EPA concludes that Respondent has violated certain requirements and provisions of RCRA Subtitle C, 42 U.S.C. §§ 6921-6939g, certain federally-authorized MdHWMR requirements promulgated thereunder, and certain applicable federal hazardous waste regulations.

Count I

(Operating a Treatment, Storage, and Disposal Facility without a Permit or Interim Status)

25. The information and allegations in the proceeding Paragraphs of this Consent Agreement are incorporated herein by reference.
26. Pursuant to Section 3005(a) and (e) of RCRA, 42 U.S.C. § 6925(a) and (e), and COMAR 26.13.07.01A, with exceptions not relevant to this matter, no person may own or operate a facility for the treatment, storage or disposal of hazardous waste without first obtaining a permit or interim status for such facility.
27. Respondent has never had a permit or interim status, pursuant to COMAR 26.13.07.01 or Section 3005(a) of RCRA, 42 U.S.C. § 6925(a), for the storage of hazardous waste at the Facility.

Generator Accumulation of Hazardous Waste (the "Generator Permit Exemption")

28. COMAR 26.13.03.05E provides:
 - E. Accumulation Time.
 - (1) A generator may accumulate hazardous waste on-site without a permit for 90 days or less if:
 - (a) The waste is shipped off-site within 90 days to a permitted facility or placed in an on-site permitted facility;
 - (b) The generator accumulates the waste:
 - (i) In containers,
 - (ii) In tanks, or
 - (iii) On drip pads, if the waste is drippage from a wood-preserving process, precipitation, or surface water run-on;
 - (c) Containers used to accumulate the waste meet the standards of §A of this regulation;
 - (d) The generator accumulates the waste in containers in accordance with COMAR 26.13.05.09;
 - (e) The date upon which each period of accumulation begins is clearly marked and visible for inspection on each container;
 - (f) Each container is:
 - (i) Properly labeled according to §§B and C of this regulation; and

- (ii) Labeled or marked clearly with the words "Hazardous Waste", while being accumulated on site.
- (g) The generator complies with the requirements for owners or operators in COMAR 26.13.0S.02G [personnel training], .03 [preparedness and prevention], and .04 [contingency plan and emergency procedures];

* * *

- (3) Satellite Accumulation. A generator may accumulate as much as 55 gallons of hazardous waste or 1 quart of acutely hazardous waste listed in COMAR 26.13.02.19E in containers at or near any point of generation where wastes initially accumulate, which is under the control of the operator of the process generating the waste, without a permit and without complying with §E(1) provided the generator:
29. Although the provisions of COMAR 26.13.03.05E(1) provide hazardous waste generators with an exemption from the permitting requirements for the temporary accumulation (90 days or less) of hazardous waste generated by a facility (referred to here as the "Generator Permit Exemption"), Respondent failed to meet the conditions necessary to qualify for the exemption set forth in COMAR 26.13.03.05E(1).
 30. The following acts or omissions, further described below, prevented Respondent from meeting the regulatory permit exemption conditions in COMAR 26.13.03.05(E)(1).
 31. At the time of the Inspection on May 17, 2018, Respondent was storing hazardous waste in a 90-Day container that was not marked with a start accumulation date as required by COMAR 26.13.03.05E(1)(e): In the maintenance area within Building 71, there was an open blue 55-gallon container storing approximately fifteen 4-foot spent fluorescent lamps and ten 8-foot spent fluorescent lamps, which are regulated as hazardous waste in Maryland. Neither the container, nor the lamps themselves, was marked with a start accumulation date.
 32. At the time of the Inspection on May 17, 2018, Respondent failed to label the following containers which were accumulating hazardous waste with the words "hazardous waste" or other words to identify their contents as required by COMAR 26.13.03.05.E(1)(f)(ii):
 - a. An open blue 55-gallon container of approximately fifteen 4-foot spent fluorescent lamps and ten 8-foot spent fluorescent lamps was observed in the maintenance area. Neither the container, nor the lamps themselves was marked with the words "Hazardous Waste" or "Universal Waste—Lamp(s)," or "Waste Lamp(s)," or "Used Lamp(s)".
 - b. On a pallet with two other 55-gallon containers in the "Satellite Area," a closed, blue 55-gallon container was observed, labeled "Nickel Rags and Filters", and

“Nickel Waste” and a “Generation Date” of 4/18/18. Facility personnel stated that the three containers of material were awaiting reclamation, but the label on the one container indicated that the contents were waste.

33. Respondent moved hazardous waste from one satellite accumulation container to a second satellite accumulation container, located outside the lab, which was not at or near the point of generation where waste was initially accumulated, or under the control of the operator of the process generating the waste. During the Inspection, in the OM-2 Lab, there were two 5-gallon containers of hazardous waste, labeled “No PM Acetone Wash,” and “No PM OM Organic Waste,” which were managed by the Facility as hazardous waste satellite accumulation containers. Lab personnel emptied the smaller hazardous waste containers into a 55-gallon container labeled as hazardous waste, located outside the lab, which the Facility was also managing as a hazardous waste satellite accumulation container. All three of the labs, OM-1, OM-2, OM-3, emptied their small hazardous waste containers into this single 55-gallon container. Respondent failed to keep the 55-gallon satellite accumulation container located outside the lab at or near the point of generation where waste was initially accumulated, and under the control of the operator of the process generating the waste, as required by COMAR 26.13.03.05E(3).
34. From at least June 2015 until at least May 17, 2018 (date of the Inspection), Respondent failed to conduct weekly inspections of the Facility’s hazardous waste accumulation areas, as required by COMAR 26.13.03.05E(1)(d), which incorporates by reference COMAR 26.13.05.09E, and/or failed to maintain inspection logs of weekly inspections of hazardous waste accumulation areas, as required by COMAR 26.13.05.02F(2) and (3), as further described in Count II, below.
35. From at least June 2015 until at least May 17, 2018 (date of the Inspection), Respondent failed to document, in the operating record of the Facility, inspections of the above-ground storage tanks which were storing hazardous waste at the Facility, as required by COMAR 26.13.03.05E(1)(h)(i), which incorporates by reference COMAR 26.13.05.10D(5), as further described in Count III, below.
36. On May 17, 2018 (date of the Inspection), Respondent failed to keep a container storing hazardous waste lamps, described, above, closed except when it is necessary to add or remove waste, as required by COMAR 26.13.03.05E(1)(d), which incorporates by reference COMAR 26.13.05.09D, as further described in Count IV, below.
37. From January 14, 2017 to May 17, 2018 (date of the Inspection), Respondent failed to maintain an adequate contingency plan, as required by COMAR 26.13.03.05E(1)(g), which incorporates by reference COMAR 26.13.05.04C(4), as further described in Count IV, below.
38. For each of the reasons and during each of the dates and time periods identified, above, Respondent failed to comply with the permit exemption conditions set forth in COMAR 26.13.03.05E(1)(c), E(1)(d), E(1)(e), E(1)(f)(ii), E(1)(g), (E)(1)(h)(i) and (E)(3), as identified in Paragraphs 31 through 37, above, for temporary storage (i.e., 90 days or

less), as required pursuant to COMAR 26.13.03.05E(1), and therefore failed to qualify for an exemption from the permitting/interim status requirements provided by such sections.

- 39. Therefore, requirements of COMAR Chapter 26.13.03, Chapter 26.13.06, and the permit requirements of Chapter 26.13.07 applied to the Facility, because Respondent failed to meet certain conditions of the permit exemption.
- 40. From at least June 2015 (five years prior to the filing of this Consent Agreement) until at least May 17, 2018 (date of the Inspection), Respondent violated the requirements of Section 3005(a) and (e) of RCRA, 42 U.S.C. § 6925(a) and (e), and COMAR 26.13.07.01A, by storing hazardous waste at the Facility without a permit.

Count II

(Failure to Conduct Weekly Inspections of Hazardous Waste Accumulation Areas)

- 41. The information and allegations in the proceeding Paragraphs of this Consent Agreement are incorporated herein by reference.
- 42. COMAR 26.13.05.09E, pertaining to the “Use and Management of Containers,” requires: “Inspections. The owner or operator shall inspect areas where containers are stored, at least weekly, looking for leaks and for deterioration of containers and the containment system caused by corrosion or other factors.”
- 43. COMAR 26.13.05.02F, pertaining to “General Inspection Requirements,” provides:
 - F. General Inspection Requirements.
 - (1) The owner or operator shall inspect his facility for malfunctions and deterioration, operator errors, and discharges which may be causing, or may lead to, a release of hazardous waste constituents to the environment or may be causing, or may lead to, a threat to human health. The owner or operator shall conduct these inspections often enough to identify problems in time to correct them before they harm human health or the environment.
* * *
 - (4) The owner or operator shall record inspections in an inspection log or summary. He shall keep these records for at least 3 years from the date of inspection. At a minimum, these records shall include the date and time of the inspection, the name of the inspector, a notation of the observations made, and the date and nature of any repairs or other remedial actions.
- 44. During the Inspection on May 17, 2018, the EPA Inspectors requested to review three years’ worth of inspection records which documented the inspections Respondent had conducted of the Facility’s hazardous waste accumulation areas. Facility personnel

indicated that hazardous waste accumulation area inspections were conducted and recorded as part of the Facility's "Housekeeping Procedures," and provided those housekeeping logs to the EPA Inspectors. The Inspectors reviewed the housekeeping logs for the years 2016, 2017 and 2018, through May 29, 2018. A review of all the housekeeping logs for every area of responsibility showed no indication that Facility personnel had conducted weekly inspections of the hazardous waste accumulation area known as the "Satellite Area," or any of its containers.

45. From at least January 1, 2016 until at least May 17, 2018 (date of the Inspection), Respondent violated the requirements of COMAR 26.13.05.09E, by failing to inspect areas where containers are stored, at least weekly, looking for leaks and for deterioration of containers and the containment system caused by corrosion or other factors.
46. In the alternative, from at least January 1, 2016 until at least May 17, 2018 (date of the Inspection), Respondent violated the requirements of COMAR 26.13.05.02F(4) by failing to record inspections in an inspection log or summary, and/or keep these records for at least 3 years from the date of inspection.

Count III
(Failure to Conduct Daily Inspections of Above-Ground Storage Tank Which Was Storing Hazardous Waste)

47. The information and allegations in the proceeding Paragraphs of this Consent Agreement are incorporated herein by reference.
48. COMAR 26.13.05.10D, pertaining to the "General Requirements for Hazardous Waste Management in Tanks," requires:

D. Inspections. The owner or operator shall:

- (1) Develop and follow a schedule and procedure for inspecting overflow controls:
- (2) Inspect at least once each operating day:
 - (a) Data gathered from monitoring and leak detection equipment, such as pressure and temperature gauges and monitoring wells, to ensure that the tank system is being operated according to its design;
 - (b) For uncovered tanks, the level of waste in the tank to ensure compliance with §C(2)(b) of this regulation;
 - (c) Above-ground portions of the tank system to detect corrosion or releases of waste; and
 - (d) The construction materials of, and the area immediately surrounding the externally accessible portion of the tank system, including the secondary containment system, to detect erosion or

signs of releases of hazardous wastes, such as wet spots or dead vegetation;

* * *

- (4) Develop, as part of the inspection schedule required in Regulation .02F of this chapter, and in addition to the specific requirements of §D(1)-(3) of this regulation, a schedule and procedures for assessing the condition of the tank which meet the following requirements:
 - (a) The schedule and procedures shall be adequate to detect cracks, leaks, corrosion, or erosion which may prevent compliance with §C(1) of this regulation;
 - (b) The inspection procedure shall include procedures for emptying a tank to allow entry and inspection of the interior when tank entry is necessary to detect corrosion or erosion of the tank sides and bottom; and
 - (c) The scheduled frequency of assessments shall be based on the material of construction of the tank, type of corrosion or erosion protection used, rate of corrosion or erosion observed during the previous inspections, and the characteristics of the waste being treated or stored;
- (5) Document, in the operating record of the facility, inspections of the items required to be made in §D(1)-(4) of this regulation.

- 49. At the time of the Inspection on May 17, 2018, at the Facility, there were two storage tanks, designated as Tanks A and B, which were storing hazardous waste nickel sulfate that is characteristic for corrosivity (EPA Hazardous Waste No. D002). Tanks A and B were constructed between 2012 and 2015, are double-walled tanks, and have been used for storing hazardous waste at the Facility since at least 2015.
- 50. During the Inspection, the EPA Inspectors requested to review three years' worth of inspection records which documented the inspections that Respondent conducted of these hazardous waste storage tanks. The Inspectors reviewed the logs provided by Facility personnel for the years 2016, 2017 and 2018, through May 29, 2018. A review of all the logs provided showed no indication that Facility personnel had conducted daily inspections of the hazardous waste tanks A or B.
- 51. From at least January 1, 2016 until at least May 17, 2018 (date of the Inspection), Respondent violated the requirements of COMAR 26.13.05.10D(2)(c) by failing to inspect, at least once each operating day, the above-ground portions of the tank systems associated with Tanks A and B to detect corrosion or releases of waste.
- 52. In addition, from at least January 1, 2016 until at least May 17, 2018 (date of the Inspection), Respondent violated the requirements of COMAR 26.13.05.10D(2)(d) by failing to inspect, at least once each operating day, the construction materials of, and the

area immediately surrounding the externally accessible portion of the tank systems associated with Tanks A and B, including their secondary containment systems, to detect erosion or signs of releases of hazardous wastes, such as wet spots or dead vegetation.

Count IV
**(Failure to Obtain a Written Assessment for a New Tank System,
Reviewed and Certified by a Qualified Professional Engineer)**

53. The information and allegations in the proceeding Paragraphs of this Consent Agreement are incorporated herein by reference.
54. COMAR: 26.13.01.03B(55-1) provides: "New tank system" or "new tank system component" means a tank system or component that is used for the storage or treatment of hazardous waste and that is:
- (a) An underground tank which cannot be entered for inspection for which installation has begun after July 14, 1986, with the beginning of installation being determined by the criteria of COMAR 26.13.05.10A(4); or(b) A tank for which installation has begun after July 1, 1993, and is either an underground tank which can be entered for inspection, an above-ground tank, an in-ground tank, or an on-ground tank.
55. COMAR § 26.13.05.10-3B(1), pertaining to "Design and Installation of New Tank Systems and Components," provides:
- B. Owners or operators of new tank systems or components shall:
- (1) Demonstrate, through a written assessment reviewed and certified by an independent, qualified, registered professional engineer, in accordance with COMAR 26.13.07.13D, that the tank system has sufficient structural integrity and is acceptable for the management of hazardous waste
- * * *
- (11) Obtain and keep on file at the facility written statements by the persons required to certify the design of the tank system in accordance with §B(1) and (2) of this regulation and the persons required to supervise the installation of the tank system in accordance with the requirements of §B(4)-(10) of this regulation that attest that the tank system was properly designed and installed, and that repairs required by §B(4)(c) and (7) of this regulation were performed;
56. At the time of the Inspection on May 17, 2018, Tanks A and B were "new tank systems," within the meaning of COMAR: 26.13.01.03B(55-1).
57. At the time of the Inspection on May 17, 2018, Respondent did not have at the Facility a written assessment reviewed and certified by an independent, qualified, registered

professional engineer, stating that the tank systems associated with Tanks A and B had sufficient structural integrity and were acceptable for the management of hazardous waste.

58. From at least June 1, 2015 until at least May 17, 2018 (date of the Inspection), Respondent violated the requirements of COMAR § 26.13.05.10-3B(1) by failing to demonstrate, through a written assessment reviewed and certified by an independent, qualified, registered professional engineer, that the tank systems associated with Tanks A and B had sufficient structural integrity and were acceptable for the management of hazardous waste.

Count V
(Failure to Provide a Built-in, Continuous Leak Detection System)

59. The information and allegations in the proceeding Paragraphs of this Consent Agreement are incorporated herein by reference.

60. COMAR § 26.13.05.10-4E(3)(c), pertaining to “Containment and Detection of Releases,” provides:

E. The owner or operator shall ensure that:

* * *

(3) Double-walled tanks are:

* * *

(c) Provided with a built-in continuous leak detection system capable of detecting a release within 24 hours, or at the earliest practicable time, if the owner or operator can demonstrate to the Secretary, and the Secretary concludes, that the existing detection technology or site conditions would not allow detection of a release within 24 hours.

61. At the time of the Inspection on May 17, 2018, Tank A and Tank B did not have built-in continuous leak detection systems, capable of detecting a release within 24 hours.
62. From at least June 2015 to May 17, 2018 (date of the Inspection), Respondent violated the requirements of COMAR § 26.13.05.10-4E(3)(c) by failing to provide Tank A and Tank B with built-in continuous leak detection systems, capable of detecting a release within 24 hours, or at the earliest practicable time.

**Count VI
(Failure to Keep Containers of Hazardous Waste
Closed Except When it is Necessary to Add or Remove Waste)**

- 63. The information and allegations in the proceeding Paragraphs of this Consent Agreement are incorporated herein by reference.
- 64. COMAR 26.13.05.09D, pertaining to the “Use and Management of Containers,” requires that “[a] container holding hazardous waste shall always be kept closed during storage, except when it is necessary to add or remove waste, and the container may not be opened, handled, or stored in any manner which may rupture the container or cause it to leak.”
- 65. At the time of the Inspection on May 17, 2018, Respondent failed to keep closed the following container of hazardous waste, at a time when it was not adding or removing waste: in the maintenance area within Building 71, there was an open blue 55-gallon container storing approximately fifteen 4ft-spent fluorescent lamps, and ten 8ft-spent fluorescent lamps. The lamps were sticking out of the container, with more than half the length of the lamps exposed.
- 66. On May 17, 2018 (date of the Inspection), Respondent violated the requirements of COMAR 26.13.05.09D by failing to hold hazardous waste in containers that were always kept closed during storage, except when it was necessary to add or remove waste.

**Count VII
(Failure to Failure to Maintain Adequate Contingency Plan)**

- 67. The information and allegations in the proceeding Paragraphs of this Consent Agreement are incorporated herein by reference.
- 68. COMAR 26.13.05.04, pertaining to the “Contingency and Emergency Procedures,” provides:

B. Purpose and Implementation of Contingency Plan.

- (1) Every owner or operator shall have a contingency plan for his facility . . . designed to minimize hazards to human health and the environment from fires, explosions, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water. . . .

* * *

C. Content of Contingency Plan.

* * *

- (4) The plan shall list names, addresses, and phone numbers (office and home) of all persons qualified to act as emergency coordinator . . . and this list shall be kept up to date. When more than one person is listed, one shall be named as primary emergency coordinator and others shall be listed in the order in which they will assume responsibility as alternates.

* * *

D. Copies of Contingency Plan. A copy of the contingency plan and all revisions to the plan shall be:

- (1) Maintained at the facility . . .

69. At the time of the Inspection on May 17, 2018, the EPA Inspectors reviewed the Facility's "Emergency Action Plan," which serves as the Contingency Plan, and which became effective on January 14, 2017. This Plan included the names and contact information of several persons qualified to serve as emergency coordinator, but did not name a primary emergency coordinator and list others in the order in which they will assume responsibility as alternates.
70. From January 14, 2017 to at least May 17, 2018 (date of the Inspection), Respondent violated the requirements of COMAR 26.13.05.04C(4) by failing to include in the Facility's Contingency Plan, the naming of a primary emergency coordinator where more than one qualified person is listed, and listing the others in the order in which they will assume responsibility as alternates.

CIVIL PENALTY

71. In settlement of EPA's claims for civil penalties for the violations alleged in this Consent Agreement, Respondent consents to the assessment of a civil penalty in the amount of **EIGHTY-NINE THOUSAND DOLLARS (\$89,000.00)**, which Respondent shall be liable to pay in accordance with the terms set forth below.
72. The civil penalty is based upon EPA's consideration of a number of factors, including the penalty criteria ("statutory factors") set forth in Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), including, the following: the seriousness of the violation and any good faith efforts to comply with the applicable requirements. These factors were applied to the particular facts and circumstances of this case with specific reference to EPA's October, 1990 RCRA Civil Penalty Policy, as revised in June, 2003 ("RCRA Penalty Policy"), which reflect the statutory penalty criteria and factors set forth at Section 3008(a)(3) and (g) of RCRA, 42 U.S.C. §§ 6928(a)(3) and (g), the appropriate Adjustment of Civil Monetary Penalties for Inflation, pursuant to 40 C.F.R. Part 19, and the applicable EPA memoranda addressing EPA's civil penalty policies to account for inflation.

73. Payment of the civil penalty amount, and any associated interest, administrative fees, and late payment penalties owed, shall be made by either cashier's check, certified check or electronic wire transfer, in the following manner:

- a. All payments by Respondent shall include reference to Respondent's name and address, and the Docket Number of this action, *i.e.*, RCRA-03-2020-0110;
- b. All checks shall be made payable to the "United States Treasury";
- c. All payments made by check and sent by regular mail shall be addressed and mailed to:

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

- d. For additional information concerning other acceptable methods of payment of the civil penalty amount see:

<https://www.epa.gov/financial/makepayment>

- e. A copy of Respondent's check or other documentation of payment of the penalty using the method selected by Respondent for payment shall be sent simultaneously, by email and by first class mail, to:

Natalie Katz
Sr. Assistant Regional Counsel
U.S. EPA, Region III (3RC40)
1650 Arch Street
Philadelphia, PA 19103-2029
katz.natalie@epa.gov

Regional Hearing Clerk
U.S. EPA, Region III (3RC00)
1650 Arch Street
Philadelphia, PA 19103-2029
R3_Hearing_Clerk@epa.gov

74. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim, as more fully described below. Accordingly, Respondent's failure to make timely payment of the penalty as specified herein shall result in the assessment of late payment charges including interest, penalties and/or administrative costs of handling delinquent debts.

75. Payment of the civil penalty is due and payable immediately upon receipt by Respondent of a true and correct copy of the fully executed and filed Consent Agreement and Final Order. Receipt by Respondent or Respondent's legal counsel of such copy of the fully executed Consent Agreement and Final Order, with a date stamp indicating the date on which the Consent Agreement and Final Order was filed with the Regional Hearing Clerk, shall constitute receipt of written initial notice that a debt is owed EPA by Respondent in accordance with 40 C.F.R. § 13.9(a).
76. INTEREST: In accordance with 40 C.F.R § 13.11(a)(1), interest on the civil penalty assessed in this Consent Agreement and Final Order will begin to accrue on the date that a copy of the fully executed and filed Consent Agreement and Final Order is mailed or hand-delivered to Respondent. However, EPA will not seek to recover interest on any amount of the civil penalties that is paid within thirty (30) calendar days after the date on which such interest begins to accrue. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R § 13.11(a).
77. ADMINISTRATIVE COSTS: The costs of the EPA's administrative handling of overdue debts will be charged and assessed monthly throughout the period a debt is overdue. 40 C.F.R. § 13.11(b). Pursuant to Appendix 2 of EPA's *Resources Management Directives – Case Management*, Chapter 9, EPA will assess a \$15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the payment is due and an additional \$15.00 for each subsequent thirty (30) days the penalty remains unpaid.
78. LATE PAYMENT PENALTY: A late payment penalty of six percent per year will be assessed monthly on any portion of the civil penalty that remains delinquent more than ninety (90) calendar days. 40 C.F.R. § 13.11(c). Should assessment of the penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d).
79. Respondent agrees not to deduct for federal tax purposes the civil penalty assessed in this Consent Agreement and Final Order.
80. For purposes of the identification requirement of Section 162(f)(2)(A)(ii) of the Internal Revenue Code, 26 U.S.C. §162(f)(2)(A)(ii), obtaining engineer's certification for Tanks A and B, and providing release detection for Tanks A and B, as required by Paragraphs 81 through 86, below, is restitution or required to come into compliance with law.

COMPLIANCE ORDER

81. Respondent shall perform the following Compliance Tasks set forth in this Section within the time specified. Respondent shall certify completion of the Compliance Tasks set forth in Paragraphs 82 through 85 in accordance with Paragraph 86, below, no later than sixty (60) days of the date that a copy of the fully executed and filed Consent Agreement and Final Order is sent by email to Respondent.

82. Within sixty (60) days of the date that a copy of the fully executed and filed Consent Agreement and Final Order is sent by email to Respondent, Respondent shall obtain a written assessment reviewed and certified by an independent, qualified, registered professional engineer, demonstrating that the tank systems associated with Tanks A and B have sufficient structural integrity and are acceptable for the management of hazardous waste, in accordance with the requirements of COMAR § 26.13.05.10-3B(1).
83. Within sixty (60) days of the date that a copy of the fully executed and filed Consent Agreement and Final Order is sent by email to Respondent, Respondent shall provide Tank A and Tank B with built-in continuous leak detection systems, capable of detecting a release within 24 hours, in accordance with the requirements of COMAR § 26.13.05.10-4E(3)(c).
84. Within sixty (60) days of the date that a fully executed and filed Consent Agreement and Final Order is sent by email to Respondent, Respondent shall draft and submit to EPA the following documents. Such submission shall be certified in the form required by Paragraph 86 below.
- (a) The standard operating procedure (“SOP”) for conducting weekly inspections performed of areas where containers of hazardous waste are stored, pursuant to COMAR 26.13.05.09E. This SOP shall include, at a minimum, the schedule for conducting inspections, designation of responsibility, and form to be used for recording in the inspections;
 - (b) The SOP for conducting daily inspections of the above-ground portions of the tank systems associated with Tanks A and B, pursuant to COMAR 26.13.05.10D(2)(c), and the construction materials of, and the area immediately surrounding the externally accessible portion of the tank systems associated with Tanks A and B, pursuant to COMAR 26.13.05.10D(2)(d).
85. Within sixty (60) days of the date that a fully executed and filed Consent Agreement and Final Order is sent by email to Respondent, Respondent shall complete all work necessary to bring the Facility into compliance with the MdHWMR and RCRA Subtitle C and certify such compliance in writing to the EPA. Respondent’s certification shall be in the form required by Paragraph 86 below and shall include documentation (including but not limited to work orders, line drawings and photographs) demonstrating the means by which Respondent has returned to compliance with RCRA Subtitle C and the MdHWMR, including but not limited to compliance with 40 C.F.R. Sections 264, Subsection J.
86. Submissions to EPA: Any notice, certification, data presentation, or other document submitted by Respondent pursuant to this Compliance Order which discusses, describes, demonstrates, or supports any finding or makes any representation concerning Respondent’s compliance or non-compliance with any requirements of this Compliance Order shall be certified by a responsible corporate officer of Respondent. A responsible corporate officer means: (1) a president, secretary, treasurer, or vice-president of the

corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation; or (2) the manager of one or more manufacturing, production, or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding \$25 million (in second quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures. The aforesaid certification shall provide the following statement above the signature of the responsible corporate officer signing the certification on behalf of the Respondent:

I certify under penalty of law that this document and all attachments are true, accurate and complete. As to [the/those] identified portions of this [type of submission] for which I cannot personally verify [its/their] accuracy, I certify under penalty of law that this [type of submission] and all attachments were prepared in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.

Signature: _____
Name: _____
Title: _____

Except as otherwise provided herein, notifications or submissions to EPA required by this Compliance Order shall be sent, by email and by first-class mail, to the attention of:

Eric Greenwood (3ED22)
RCRA Section
Air, RCRA & Toxics Branch
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency Region III
1650 Arch Street
Philadelphia, PA 19103-2029
greenwood.eric@epa.gov; and

with a copy by email only to the attention of:

Natalie Katz (3RC40)
Sr. Assistant Regional Counsel
U.S. Environmental Protection Agency Region III
katz.natalie@epa.gov

GENERAL SETTLEMENT CONDITIONS

87. By signing this Consent Agreement, Respondent acknowledges that this Consent Agreement and Final Order will be available to the public and represents that, to the best of Respondent's knowledge and belief, this Consent Agreement and Final Order does not contain any confidential business information or personally identifiable information from Respondent.
88. Respondent certifies that any information or representation it has supplied or made to EPA concerning this matter was, at the time of submission true, accurate, and complete and that there has been no material change regarding the truthfulness, accuracy or completeness of such information or representation. EPA shall have the right to institute further actions to recover appropriate relief if EPA obtains evidence that any information provided and/or representations made by Respondent to the EPA regarding matters relevant to this Consent Agreement and Final Order, including information about respondent's ability to pay a penalty, are false or, in any material respect, inaccurate. This right shall be in addition to all other rights and causes of action that EPA may have, civil or criminal, under law or equity in such event. Respondent and its officers, directors and agents are aware that the submission of false or misleading information to the United States government may subject a person to separate civil and/or criminal liability.

OTHER APPLICABLE LAWS

89. Nothing in this Consent Agreement and Final Order shall relieve Respondent of its obligation to comply with all applicable federal, state, and local laws and regulations, nor shall it restrict EPA's authority to seek compliance with any applicable laws or regulations, nor shall it be construed to be a ruling on the validity of any federal, state or local permit. This Consent Agreement and Final Order does not constitute a waiver, suspension or modification of the requirements of the Resource Conservation and Recovery Act, or any regulations promulgated thereunder.

RESERVATION OF RIGHTS

90. This Consent Agreement and Final Order resolves only EPA's claims for civil penalties for the specific violation[s] alleged against Respondent in this Consent Agreement and Final Order. EPA reserves the right to commence action against any person, including Respondent, in response to any condition which EPA determines may present an imminent and substantial endangerment to the public health, public welfare, or the environment. This settlement is subject to all limitations on the scope of resolution and to the reservation of rights set forth in Section 22.18(c) of the Consolidated Rules of Practice, 40 C.F.R. § 22.18(c). EPA reserves any rights and remedies available to it under RCRA, the regulations promulgated thereunder and any other federal law or regulation to enforce the terms of this Consent Agreement and Final Order after its effective date.

EXECUTION /PARTIES BOUND

91. This Consent Agreement and Final Order shall apply to and be binding upon the EPA, the Respondent and the officers, directors, employees, contractors, successors, agents and assigns of Respondent. By his or her signature below, the person who signs this Consent Agreement on behalf of Respondent is acknowledging that he or she is fully authorized by the Respondent to execute this Consent Agreement and to legally bind Respondent to the terms and conditions of this Consent Agreement and Final Order.

EFFECTIVE DATE

92. The effective date of this Consent Agreement and Final Order is the date on which the Final Order, signed by the Regional Administrator of EPA, Region III, or his/her designee, the Regional Judicial Officer, is filed along with the Consent Agreement with the Regional Hearing Clerk pursuant to the Consolidated Rules of Practice.

ENTIRE AGREEMENT

93. This Consent Agreement and Final Order constitutes the entire agreement and understanding between the Parties regarding settlement of all claims for civil penalties pertaining to the specific violations alleged herein and there are no representations, warranties, covenants, terms, or conditions agreed upon between the Parties other than those expressed in this Consent Agreement and Final Order.

[MAKE SEPARATE SIGNATURE PAGES FOR EACH PARTY]

For Respondent: COLONIAL METALS, INC.

Date: 7/27/2020

By:


George Benvenuto, President

For the Complainant:

After reviewing the Consent Agreement and other pertinent matters, I, the undersigned Director of the Enforcement and Compliance Assurance Division of the United States Environmental Protection Agency, Region III, agree to the terms and conditions of this Consent Agreement and recommend that the Regional Administrator, or his/her designee, the Regional Judicial Officer, issue the attached Final Order.

Date 8/11/20

By: **KAREN MELVIN**
Karen Melvin
Director, Enforcement and Compliance Division
U.S. EPA – Region III
Complainant

Digitally signed by
KAREN MELVIN
Date: 2020.08.11
09:48:18 -04'00'

Attorney for Complainant:

Date 8/3/20

By: **NATALIE KATZ**
Natalie L. Katz
Sr. Assistant Regional Counsel
U.S. EPA – Region III

Digitally signed by
NATALIE KATZ
Date: 2020.08.03
16:09:18 -04'00'

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103

In the Matter of: :
: :
Colonial Metals, Inc. : U.S. EPA Docket No. RCRA-03-2020-0110
505 Blue Ball Road #20 : :
Elkton, Md 21921 : Proceeding under Section 3008(a) and (g) of the
: Resource Conservation and Recovery Act, as
Respondent. : amended, 42 U.S.C. § 6928(a) and (g)
: :
Colonial Metals, Inc. : :
505 Blue Ball Road #20 : :
Elkton, Md 21921 : :
: :
Facility. : :
: :

FINAL ORDER

Complainant, the Director of the Enforcement and Compliance Assurance Division, U.S. Environmental Protection Agency, Region III, and Respondent, Colonial Metals, Inc. have executed a document entitled "Consent Agreement," which I hereby ratify as a Consent Agreement in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits ("Consolidated Rules of Practice"), 40 C.F.R. Part 22 (with specific reference to [Sections 22.13(b) and 22.18(b)(2) and (3) (*for Super Consent Agreement/Final Orders*) or Sections 22.18(b)(2) and (3) (*for Consent Agreement/Final Orders*)]. The terms of the foregoing Consent Agreement are accepted by the undersigned and incorporated into this Final Order as if fully set forth at length herein.

Based upon the representations of the parties in the attached Consent Agreement, the penalty agreed to therein is based upon consideration of, *inter alia*, EPA's 1990 RCRA Civil Penalty Policy, as revised in June, 2003 ("RCRA Penalty Policy"), and again on May 6, 2020, and the statutory factors set forth at Section 3008(a)(3) and (g) of RCRA, 42 U.S.C. § 6928(a)(3) and (g).

NOW, THEREFORE, PURSUANT TO Section 3008(a) and (g) of the Resource Conservation and Recovery Act ("RCRA" or the "Act"), as amended, 42 U.S.C. § 6928(a) and (g), and Section 22.18(b)(3) of the Consolidated Rules of Practice, **IT IS HEREBY ORDERED** that Respondent pay a civil penalty in the amount of **EIGHTY-NINE THOUSAND DOLLARS (\$89,000.00)**, in accordance with the payment provisions set forth in the Consent Agreement, and comply with the terms and conditions of the Consent Agreement.

This Final Order constitutes the final Agency action in this proceeding. This Final Order shall not in any case affect the right of the Agency or the United States to pursue appropriate injunctive or other equitable relief, or criminal sanctions for any violations of the law. This Final Order resolves only those causes of action alleged in the Consent Agreement and does not waive, extinguish or otherwise affect Respondent's obligation to comply with all applicable provisions of RCRA and the regulations promulgated thereunder.

The effective date of the attached Consent Agreement and this Final Order is the date on which this Final Order is filed with the Regional Hearing Clerk.

Date 8/12/20

By: **JOSEPH LISA**
Joseph J. Lisa
Regional Judicial and Presiding Officer
U.S. EPA Region III

Digitally signed by
JOSEPH LISA
Date: 2020.08.12
08:39:09 -04'00'

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103**

In the Matter of:	:
	:
Colonial Metals, Inc. 505 Blue Ball Road #20 Elkton, Md 21921	: U.S. EPA Docket No. RCRA-03-2020-0110
	:
Respondent.	: Proceeding under Section 3008(a) and (g) of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6928(a) and (g)
	:
Colonial Metals, Inc. 505 Blue Ball Road #20 Elkton, Md 21921	:
	:
Facility.	:
	:

CERTIFICATE OF SERVICE

I certify that on August 12, 2020, the original and one (1) copy of the foregoing ***Consent Agreement and Final Order***, were filed with the EPA Region III Regional Hearing Clerk. I further certify that on the date set forth below, I caused to be served a true and correct copy of the foregoing to each of the following persons, in the manner specified below, at the following addresses:

Served via E-Mail to:

George Benvegno, President
Colonial Metals, Inc.
505 Blue Ball Road #20
Elkton, Md 21921
gbenvegno@colonialmetals.com

Michael V. Forlini, Esquire
Forlini Law Group
5 East Franklin Street
Baltimore, MD 21202
michael@forlinilawgroup.com

Copies served via E- Mail to:

Natalie Katz
Senior Assistant Regional Counsel
ORC – 3RC40
U.S. EPA, Region III
katz.natalie@epa.gov

Eric Greenwood
Inspector
ECAD – 3ED22
U.S. EPA, Region III
greenwood.eric@epa.gov

Dated: August 12, 2020

CATHERINE Digitally signed by
MCCOOL CATHERINE MCCOOL
Date: 2020.08.12
10:23:53 -04'00'

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region III