

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

In the Matter of:	:
	:
VIBRANTZ MINERALS LLC	: U.S. EPA Docket No. EPCRA-03-2023-0105
15311 VANTAGE PARKWAY WEST	:
SUITE 350	: Proceeding under Section 325(c) of The
HOUSTON, TX 77032	: Emergency Planning and Community Right-to-
	: Know Act, 42 U.S.C. § 11045(c)
Respondent.	:
	:
NEW CASTLE PLANT	:
301 PIGEON POINT ROAD	:
NEW CASTLE, DE 19720	:
	:
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 Vibrantz Minerals LLC, formerly Prince Minerals, LLC (“Respondent”) (collectively the “Parties”), pursuant to Section 325(c) of the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. § 11045(c), 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. The Emergency Planning and Community Right-to-Know Act authorizes the Administrator of the U.S. Environmental Protection 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 the authority to enter into agreements concerning administrative penalties to the Complainant. 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 the Emergency Planning and Community Right-to-Know Act (“EPCRA” or the “Act”) 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 (“EPA”) has jurisdiction over the above-captioned matter, as described in Paragraph 1, above.
4. The Consolidated Rules of Practice govern this administrative adjudicatory proceeding pursuant to 40 C.F.R. § 22.1(a)(8).

GENERAL PROVISIONS

5. For purposes of this proceeding only, Respondent admits the jurisdictional allegations set forth in this Consent Agreement and Final Order.
6. Except as provided in Paragraph 5, above, Respondent neither admits nor denies the specific factual allegations set forth in this Consent Agreement.
7. 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.
8. 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.
9. 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.
10. Respondent shall bear its own costs and attorney’s fees in connection with this proceeding.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

11. 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.
12. Respondent is a manufacturer of specialized mineral and chemical products, including manganese-based powder alloys, iron and chromite products, and sand-based products. The manufacturing activities at the Facility involve materials such as carbon black, iron chromite mineral ore, iron pyrite ore, magnesium oxide, olivine sand, potassium aluminum flouride, silica sand, and zircon metal ore, some of which contain toxic chemicals including nickel, manganese, barium and lead.
13. Respondent is, and at all times relevant to the violations alleged herein was, a limited liability company incorporated in the state of Delaware.

14. Respondent's corporate headquarters is located at 15311 Vantage Parkway West Ste. 350, Houston, Texas 77032.
15. Respondent is a "person" as that term is defined in Section 329(7) of EPCRA, 42 U.S.C. § 11049(7) and is subject to the assessment of civil penalties for the violations alleged herein.
16. Respondent is and, at all times relevant to the violations alleged herein, was the owner and operator of a facility, as that term is defined in Section 329(4) of EPCRA, 42 U.S.C. § 11049(4), located at 301 Pigeon Point Road, New Castle, DE 19720 (hereinafter "the Facility").
17. On October 11, 2022, the EPA sent Respondent a notice of inspection ("NOI") notifying the company of a pending EPA inspection pursuant to Section 313 of EPCRA, 42 U.S.C. § 11023, and the regulations codified at 40 C.F.R. Part 372.
18. On November 3, 2022, the EPA conducted its inspection at the Facility.
19. On November 9, 2022, Respondent submitted toxic chemical release forms for calendar years 2019, 2020 and 2021 pursuant to Section 313(a) of EPCRA, 42 U.S.C. § 11023(a).
20. On February 13, 2023, the EPA issued a Notice of Potential Violation and Opportunity to Confer ("NOPVOC") letter to Respondent.
21. On March 14, 2023, the Parties participated in an Opportunity to Confer conference to discuss the alleged violations in the February 13, 2023 NOPVOC.
22. Based on the information available to the EPA, as of the date of this Consent Agreement, Respondent has updated internal operating procedures to ensure compliance with reporting requirements related to lead processing pursuant to Section 313(a) of EPCRA, 42 U.S.C. § 11023(a).

Counts I - III

Failure to Complete a Toxic Chemical Release Form for Lead in 2019, 2020, and 2021

23. The information and allegations in the preceding paragraphs of this Consent Agreement are incorporated herein by reference.
24. Section 313(a) of EPCRA, 42 U.S.C. § 11023(a) requires that "[t]he owner or operator of a facility subject to the requirements of this section shall complete a toxic chemical release form as published under subsection (g) for each toxic chemical listed under subsection (c) that was manufactured, processed, or otherwise used in quantities exceeding the toxic chemical threshold quantity established by subsection (f) during the preceding calendar year at such facility." *See also* 40 C.F.R. § 372.30.

25. Pursuant to Section 313(b)(1)(A) of EPCRA, 42 U.S.C. § 11023(b)(1)(A), the requirements of Section 313 “apply to owners and operators of facilities that have 10 or more full-time employees and that are in Standard Industrial Classification Codes 20 through 39 (as in effect on July 1, 1985) and that manufactured, processed, or otherwise used a toxic chemical listed under subsection (c) in excess of the quantity of that toxic chemical established under subsection (f) during the calendar year for which a release form is required under this section.” *See also* 40 C.F.R. § 372.22.
26. Each toxic chemical release form (“TRI Form”) must be submitted on or before July 1 of the next year. 40 C.F.R. § 372.30(d).
27. 40 C.F.R. § 372.65 lists the chemicals chemical categories to which the regulations promulgated pursuant to EPCRA, apply.
28. Pursuant to 40 C.F.R. § 372.65(1), Table 1, lead is a regulated chemical.
29. Pursuant to Section 313(f)(1)(B)(iii) of EPCRA, 42 U.S.C. § 11023(f)(1)(B)(iii), the current reporting threshold for toxic chemicals manufactured or processed at a facility is 25,000 pounds, unless the Administrator establishes a revised threshold pursuant to 42 U.S.C. § 11023(f)(2) or an exemption under 40 C.F.R. § 372.38 applies.
30. Pursuant to 40 C.F.R. § 372.28(a)(1), Table 1, the reporting threshold for lead is 100 pounds.
31. During calendar years 2019, 2020 and 2021, Respondent had between 18-22 full time employees.
32. During calendar years 2019, 2020 and 2021, Respondent had a primary SIC code of 3295, which is between 20 [2000] and 39 [3900] (as in effect on January 1, 1987).
33. During calendar years 2019, 2020 and 2021, Respondent manufactured, processed or otherwise used the toxic chemical lead in quantities of 200.59 pounds, 159.78 pounds, and 162.294 pounds, respectively.
34. On November 9, 2022, Respondent submitted TRI Forms for the toxic chemical lead for calendar years 2019, 2020 and 2021.
35. During calendar years 2019, 2020 and 2021, Respondent failed to submit TRI Forms for lead by the July 1, 2020, 2021, and 2022 reporting deadlines, respectively.
36. For the calendar years 2019, 2020, and 2021, Respondent violated 40 C.F.R. § 372.30 by failing timely report the amounts of the toxic chemical lead released from the Facility into the environment and transferred offsite by July 1, of the year following the release.

37. In failing to comply with 40 C.F.R. § 372.30, Respondent is in violation of Section 313 of EPCRA, 42 U.S.C. § 11023, and is subject to the assessment of penalties under Section 325(c) of EPCRA, 42 U.S.C. § 11045(c).

CIVIL PENALTY

38. 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 Sixteen Thousand Five Hundred and Thirteen Dollars (\$16,513) which Respondent shall be liable to pay in accordance with the terms set forth below.

39. The civil penalty is based upon EPA’s consideration of several factors. These factors were applied to the particular facts and circumstances of this case with specific reference to EPA’s *Enforcement Response Policy for Section 313 of the Emergency Planning and Community Right to Know Act (1987) and Section 6607 of the Pollution Prevention Act (1990)* (April 12, 2001), 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.

40. 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.*, EPCRA-03-2023-0105
- 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 979078
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 to:

Hannah G. Leone
Assistant Regional Counsel
Leone.hannah@epa.gov

and

U.S. EPA Region III Regional Hearing Clerk
R3_Hearing_Clerk@epa.gov.

41. 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.
42. 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).
43. 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 Respondent is notified of its debt to the United States as established upon the ratification and filing of the fully executed Consent Agreement and Final Order with the Regional Hearing Clerk. 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).
44. 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). If payment is not received within 30 calendar days of the effective date of this Consent Agreement, EPA will also 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.
45. 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).

46. Failure by the Respondent to pay the EPCRA civil penalty assessed by the Final Order in accordance with the terms of this Consent Agreement and Final Order may subject Respondent to a civil action to collect the assessed penalties, plus interest, pursuant to Section 325 of EPCRA, 42 U.S.C. § 11045. In any such collection action, the validity, amount and appropriateness of the penalty shall not be subject to review.
47. Respondent agrees not to deduct for federal tax purposes the civil penalty assessed in this Consent Agreement and Final Order.
48. The parties consent to service of the Final Order by e-mail at the following valid email addresses: leone.hannah@epa.gov (for Complainant), and Alison.Landis@vibrantz.com (for Respondent).

GENERAL SETTLEMENT CONDITIONS

49. 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.
50. 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.

CERTIFICATION OF COMPLIANCE

51. Respondent certifies to EPA, upon personal investigation and to the best of its knowledge and belief, that it currently is in compliance with regard to the violations alleged in this Consent Agreement.

OTHER APPLICABLE LAWS

52. 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 EPCRA or any regulations promulgated thereunder.

RESERVATION OF RIGHTS

53. This Consent Agreement and Final Order resolves only EPA’s claims for civil penalties for the specific violations 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 EPCRA, 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

54. 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

55. 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

56. 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.

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In the Matter of: Vibrantz Minerals LLC

EPA Docket No. EPCRA-03-2023-0105

For Respondent:

VIBRANTZ MINERALS LLC

By: *Daniel J Beringer 6/28/23*
Digital Signature and Date
Daniel J Beringer
Director of Operations

For the Complainant:

After reviewing the Consent Agreement and other pertinent matters, I, the undersigned Director of the Enforcement & 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.

By: _____
[*Digital Signature and Date*]
Karen Melvin, Director
Enforcement & Compliance Assurance Division
U.S. EPA – Region III
Complainant

Attorney for Complainant:

By: _____
[*Digital Signature and Date*]
Hannah G. Leone
Assistant Regional Counsel
U.S. EPA – Region III

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

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FINAL ORDER

Complainant, the Director of the Enforcement and Compliance Assurance Division, U.S. Environmental Protection Agency, Region III, and Respondent, Vibrantz Minerals LLC 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)). 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 *Enforcement Response Policy for Section 313 of the Emergency Planning and Community Right to Know Act (1987) and Section 6607 of the Pollution Prevention Act (1990)* (April 12, 2001).

NOW, THEREFORE, PURSUANT TO Section 325(c) of the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. Section 11045(c), 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 **SIXTEEN THOUSAND FIVE HUNDRED AND THIRTEEN DOLLARS (\$16,513)**, in accordance with the payment provisions set forth in the Consent Agreement and in 40 C.F.R. § 22.31(c), 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 the Emergency Planning and Community Right-to-Know Act 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: _____

By: _____

Joseph J. Lisa
Regional Judicial and Presiding Officer
U.S. EPA Region III

