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

APR - 6 2017

SENT VIA E-MAIL

To: Susan Nelson
snelson@snlaw.com

Re: Consent Agreement and Final Order
Colonial Surface Solutions, Inc.
Docket No:

Susan B. Nelson, Esq.
Attorney at Law
Spengler Nathanson P.L.L.
Four SeaGate, Suite 400
Toledo, Ohio 43604-2622

Dear Ms. Nelson:

Attached, please find a signed, fully-executed Consent Agreement and Final Order (CAFO) in resolution of the above case. The original was filed on April 6, 2017, with the Regional Hearing Clerk (RHC).

Please pay the civil penalty in the amount of $57,520, plus interest, in the manner prescribed in paragraphs 124-131 of the CAFO, and reference all checks with the Respondent's site name and docket number **RCRA-05-2017-0010**. Your first payment installment is due within 30 calendar days of the effective date of the CAFO. The second and third installments are due within 180 days and 360 days, respectively, of the effective date of the CAFO.

Additionally, please complete the agreed-upon Supplemental Environmental Project (SEP) in the manner prescribed in paragraphs 132-149 within 180 days of the effective date of this CAFO. Your SEP completion report is due no later than one year after the effective date of this CAFO.

A *Notice of Securities and Exchange Commission Registrant's Duty to Disclose Environmental Legal Proceedings* is also attached for your information.

Thank you for your cooperation in resolving this matter. If you have any questions or concerns regarding this matter, please contact Brenda Whitney, of my staff, at 312-353-4796 or at whitney.brenda@epa.gov.

Sincerely,

for Gary J. Victorine, Chief
RCRA Branch

Attachments

cc: Mitch Mathews, OEPA (Mitchell.mathews@epa.ohio.gov) (w/CAFO)

NOTICE OF SECURITIES AND EXCHANGE COMMISSION REGISTRANTS' DUTY TO DISCLOSE ENVIRONMENTAL LEGAL PROCEEDINGS

Securities and Exchange Commission regulations require companies registered with the SEC (e.g., publicly traded companies) to disclose, on at least a quarterly basis, the existence of certain administrative or judicial proceedings taken against them arising under Federal, State or local provisions that have the primary purpose of protecting the environment. Instruction 5 to Item 103 of the SEC's Regulation S-K (17 CFR 229.103) requires disclosure of these environmental legal proceedings. For those SEC registrants that use the SEC's "small business issuer" reporting system, Instructions 1-4 to Item 103 of the SEC's Regulation S-B (17 CFR 228.103) requires disclosure of these environmental legal proceedings.

If you are an SEC registrant, you have a duty to disclose the existence of pending or known to be contemplated environmental legal proceedings that meet any of the following criteria (17 CFR 229.103(5)(A)-(C)):

A. Such proceeding is material to the business or financial condition of the registrant;
B. Such proceeding involves primarily a claim for damages, or involves potential monetary sanctions, capital expenditures, deferred charges or charges to income and the amount involved, exclusive of interest and costs, exceeds 10 percent of the current assets of the registrant and its subsidiaries on a consolidated basis; or
C. A governmental authority is a party to such proceeding and such proceeding involves potential monetary sanctions, unless the registrant reasonably believes that such proceeding will result in no monetary sanctions, or in monetary sanctions, exclusive of interest and costs, of less than $100,000; provided, however, that such proceedings which are similar in nature may be grouped and described generically.

Specific information regarding the environmental legal proceedings that must be disclosed is set forth in Item 103 of Regulation S-K or, for registrants using the "small business issuer" reporting system, Item 103(a)-(b) of Regulation S-B. If disclosure is required, it must briefly describe the proceeding, "including the name of the court or agency in which the proceedings are pending, the date instituted, the principal parties thereto, a description of the factual basis alleged to underlie the proceedings and the relief sought."

You have been identified as a party to an environmental legal proceeding to which the United States government is, or was, a party. If you are an SEC registrant, this environmental legal proceeding may trigger, or may already have triggered, the disclosure obligation under the SEC regulations described above.

This notice is being provided to inform you of SEC registrants' duty to disclose any relevant environmental legal proceedings to the SEC. This notice does not create, modify or interpret any existing legal obligations, it is not intended to be an exhaustive description of the legally applicable requirements and it is not a substitute for regulations published in the Code of Federal Regulations. This notice has been issued to you for information purposes only. No determination of the applicability of this reporting requirement to your company has been made by any governmental entity. You should seek competent counsel in determining the applicability of these and other SEC requirements to the environmental legal proceeding at issue, as well as any other proceedings known to be contemplated by governmental authorities.

If you have any questions about the SEC's environmental disclosure requirements, please contact the SEC Office of the Special Senior Counsel for Disclosure Operations at (202) 942-1888.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:	)	**Docket No. RCRA-05-2017-0010**
	)	
Colonial Surface Solutions, Inc.	)	**Proceeding to Commence and Conclude**
Columbus Grove, Ohio	)	**an Action to Assess a Civil Penalty**
OHR000108035	)	**Under Section 3008(a) of the Resource**
	)	**Conservation and Recovery Act,**
Respondent.	)	**42 U.S.C. § 6928(a)**
	)	

Consent Agreement and Final Order

Preliminary Statement

1. This is an administrative action commenced and concluded under Section 3008(a) of the Solid Waste Disposal Act, as amended, also known as the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6928(a), and Sections 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules) as codified at 40 C.F.R. Part 22.

2. The Complainant is the Director of the Land and Chemicals Division, United States Environmental Protection Agency (U.S. EPA), Region 5.

3. U.S. EPA provided notice of commencement of this action to the State of Ohio pursuant to Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).

4. Respondent is Colonial Surface Solutions, Inc., a corporation doing business in the State of Ohio.

5. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the

issuance of a consent agreement and final order (CAFO). 40 C.F.R. § 22.13(b).

6. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law, upon the terms of this CAFO, is in their interest and in the public interest.

7. Respondent consents to the assessment of the civil penalty specified in this CAFO, and to the terms of this CAFO.

8. The CAFO is being entered into by the Parties as a final settlement of this proceeding. Accordingly, neither this CAFO nor any of its contents can be used as evidence in any other proceeding or matter, including, without limitation, any current or future state or federal proceeding or matter, civil or criminal, except as might relate to subsequent proceedings to enforce this CAFO.

Jurisdiction and Waiver of Right to Hearing

9. Jurisdiction for this action is conferred upon U.S. EPA by Sections 3006 and 3008 of RCRA, 42 U.S.C. §§ 6926 and 6928.

10. For purposes of this proceeding, Respondent admits the jurisdictional allegations contained herein; however Respondent neither admits nor denies the specific factual and/or legal allegations contained in this CAFO.

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

12. Respondent certifies that it is complying fully with RCRA, 42 U.S.C. §§ 6901 – 6992k, and the regulations at 40 C.F.R. Parts 260 - 279.

13. U.S. EPA and Complainant acknowledge that by entering into this CAFO, Respondent makes no admission of fact or law, including, without limitation, any admission to the alleged violations of the RCRA as set forth in this CAFO.

Statutory and Regulatory Background

14. U.S. EPA has promulgated regulations, codified at 40 C.F.R. Parts 260 through 279, governing generators and transporters of hazardous waste and facilities that treat, store, and dispose of hazardous waste, pursuant to Sections 3002, 3003, and 3004, of RCRA, 42 U.S.C. §§ 6922, 6923, and 6924.

15. Pursuant to Section 3006 of RCRA, 42 U.S.C. § 6926, the Administrator of U.S. EPA may authorize a state to administer the RCRA hazardous waste program in lieu of the federal program when the Administrator finds that the state program meets certain conditions. Any violation of regulations promulgated pursuant to Subtitle C (Sections 3001-3023 of RCRA, 42 U.S.C. §§ 6921-6939e) or any state provision authorized pursuant to Section 3006 of RCRA, constitutes a violation of RCRA, subject to the assessment of civil penalties and issuance of compliance orders as provided in Section 3008 of RCRA, 42 U.S.C. § 6928.

16. Pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b), the Administrator of U.S. EPA granted the State of Ohio final authorization to administer a state hazardous waste program in lieu of the federal government's base RCRA program effective June 30, 1989. 54 Fed. Reg. 27170 (June 28, 1989).

17. Under Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), U.S. EPA may issue an order assessing a civil penalty for any past or current violation, requiring compliance immediately or within a specified period of time, or both.

18. The Administrator of U.S. EPA may assess a civil penalty of up to $25,000 per day for each violation of Subtitle C of RCRA according to Section 3008 of RCRA, 42 U.S.C. § 6928. The Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, required U.S. EPA to adjust its penalties for inflation on a periodic basis. Pursuant to the Civil Monetary Penalty Inflation

Adjustment Rule, published at 40 C.F.R. Part 19, U.S. EPA may assess a civil penalty of up to $37,500 per day for each violation of Subtitle C of RCRA that occurred after January 12, 2009.

Factual Allegations and Alleged Violations

19. Respondent was and is a "person" as defined by OAC 3745-50-10(A)(98), 40 C.F.R. § 260.10, and Section 1004(15) of RCRA, 42 U.S.C. § 6903(15).

20. Respondent is an "owner" or "operator," as those terms are defined under OAC 3745-50-10(A)(93) and (94), and 40 C.F.R. § 260.10, of a facility located at 4599 Campbell Road, Columbus Grove, Ohio 45830 (Facility).

21. At all times relevant to this Complaint, Respondent's Facility consisted of land and structures, other appurtenances, and improvements on the land, used for treating, storing, or disposing or hazardous waste.

22. Respondent's Facility is a "facility," as that term is defined under OAC 3745-50-10(A)(46) and 40 C.F.R. § 260.10.

23. At all times relevant to this Complaint, Respondent conducted abrasive cleaning, blasting, powder coating, and wet painting operations at its Facility.

24. The wet painting operations generated solvent-based paint waste, which Respondent collected in 55-gallon containers and stored in the Facility.

25. At all times relevant to this Complaint, Respondent held solvent-based paint waste, a discarded material, for temporary periods in 55-gallon containers before the material was shipped from the Facility for treatment, storage, disposal, burning or incineration elsewhere.

26. Respondent characterized its solvent-based paint waste as hazardous waste D001.

27. Respondent stored, transported, disposed of, or otherwise handled its solvent-based paint waste in "containers" as that term is defined under OAC 3745-50-10(A)(19) and 40 C.F.R. § 260.10.

28. At all times relevant to this Complaint, Respondent's solvent-based paint waste was a "solid waste" as that term is defined under OAC 3745-50-10(A)(117), 3745-27-01(A)(23), and 40 C.F.R. § 261.2.

29. At all times relevant to this Complaint, Respondent's solvent-based paint waste was a "hazardous waste" as that term is defined under OAC 3745-50-10(A)(56), 3745-51-03, and 40 C.F.R. § 261.3.

30. At all times relevant to this Complaint, Respondent's holding of solvent-based paint waste in 55-gallon containers constituted hazardous waste "storage," as that term is defined under OAC 3745-50-10(A)(122) and 40 C.F.R. § 260.10.

31. At all times relevant to this Complaint, Respondent operated a distillation unit for solvent recovery at the Facility.

32. Respondent's distillation unit generated waste still bottoms, which Respondent collected in 55-gallon drums and stored in the Facility.

33. At all times relevant to this Complaint, Respondent held waste still bottoms, a discarded material, for temporary periods in 55-gallon containers before the material was shipped from the Facility for treatment, storage, disposal, burning or incineration elsewhere.

34. Respondent characterized its waste still bottoms as hazardous waste D001.

35. Respondent stored, transported, disposed of, or otherwise handled its waste still bottoms in "containers" as that term is defined under OAC 3745-50-10(A)(19) and 40 C.F.R. § 260.10.

36. At all times relevant to this Complaint, Respondent's waste still bottoms were a "solid waste" as that term is defined under OAC 3745-50-10(A)(117), 3745-27-01(A)(23), and 40 C.F.R. § 261.2.

37. At all times relevant to this Complaint, Respondent's waste still bottoms were a "hazardous waste" as that term is defined under OAC 3745-50-10(A)(56), 3745-51-03, and 40 C.F.R. § 261.3.

38. At all times relevant to this Complaint, Respondent's holding of waste still bottoms in 55-gallon containers constituted hazardous waste "storage," as that term is defined under OAC 3745-50-10(A)(122) and 40 C.F.R. § 260.10.

39. Respondent is a "generator," as that term is defined under OAC 3745-50-10(A)(53) and 40 C.F.R. § 260.10.

40. Respondent generated and managed hazardous waste at the Facility on or before November 19, 1980.

41. On January 24, 2012, U.S. EPA conducted a Compliance Evaluation Inspection of the Facility (the inspection).

42. On October 23, 2012, U.S. EPA issued a Notice of Violation to Respondent alleging certain violations of RCRA discovered during the inspection.

43. On November 21, 2012, Respondent submitted to U.S. EPA a written response to the Notice of Violation, hereinafter referred to as Response 1.

44. On March 27, 2015, U.S. EPA issued an information request to Respondent.

45. On or about April 28, 2015, Respondent submitted to U.S. EPA a written response to the information request, hereinafter referred to as Response 2.

46. At all times relevant to this Complaint, the State of Ohio had not issued a permit to Respondent to treat, store, or dispose of hazardous waste at its Facility.

47. At all times relevant to this Complaint, Respondent did not have interim status for the treatment, storage, or disposal of hazardous waste at its Facility.

48. On or about June 3, 2008, Respondent submitted a Hazardous Waste Notification, dated May 30, 2008, to U.S. EPA for the Facility.

49. In its Hazardous Waste Notification dated May 30, 2008, Respondent identified itself as a generator.

50. At all times relevant to this Complaint, Respondent generated during each calendar month more than 1000 kilograms of hazardous waste at the Facility.

Count I: Storage of Hazardous Waste Without a Permit or Interim Status

51. Complainant incorporates paragraphs 1 through 50 of this Complaint as though set forth in this paragraph.

52. Pursuant to 3005(a) of RCRA, 42 U.S.C. § 6925(a) and the regulations at 40 C.F.R. Part 270, the treatment, storage, or disposal of hazardous waste by any person who has not applied for or received a permit is prohibited.

53. Pursuant to OAC 3745-52-34(A) and 40 C.F.R. § 262.34(a), however, and subject to certain exceptions, a generator of hazardous waste in Ohio may accumulate hazardous waste on- site for 90 days or less without having an Ohio hazardous waste permit or interim status, provided that the generator complies with all applicable conditions set forth in OAC 3745-52-34(A) and 40 C.F.R.§ 262.34(a).

54. A generator who accumulates hazardous waste for more than 90 days is an operator of a storage facility and is subject to the requirements of OAC 3745-65 through 69 and 40 C.F.R. Part 265 and the permit requirements of OAC 3745-50-40 to 3745-50-66 and 40 C.F.R. § 270.1, 40 C.F.R. § 270.10, and 40 C.F.R. § 270.13, unless the generator has been granted an extension to the 90-day period. Storage for more than 90 days subjects the generator of hazardous waste to the requirement to either obtain an Ohio hazardous waste permit or achieve interim status.

55. At all times relevant to this Complaint, Respondent had not been granted an extension to accumulate hazardous waste for more than 90 days.

56. Similarly, the failure to comply with any of the conditions of OAC 3745-52-34 subjects the generator of hazardous waste to the requirements of OAC 3745-65 through 69 and 40 C.F.R. Part 265 and the permit requirements of OAC 3745-50-40 to 3745-50-66 and 40 C.F.R. § 270.1, 40 C.F.R. § 270.10, and 40 C.F.R. § 270.13.

Failure to Label with Accumulation Date

57. Pursuant to OAC 3745-52-34(A)(2) and 40 C.F.R. § 262.34(a)(2), in order to maintain its exemption from the requirement to have an Ohio hazardous waste permit or interim status, a generator must ensure that the date upon which each period of hazardous waste accumulation begins is clearly marked and visible for inspection on each container.

58. At the time of the inspection, Respondent failed to mark start dates of accumulation on at least 51 containers holding hazardous waste at the Facility.

59. Respondent failed to comply with requirements of the exemption from the requirement to have an Ohio hazardous waste permit or interim status pursuant to OAC 3745-52- 34(A)(2) and 40 C.F.R. § 262.34(a)(2).

Failure to Label as Hazardous Waste

60. Pursuant to OAC 3745-52-34(A)(3) and 40 C.F.R. § 262.34(a)(3), in order to maintain its exemption from the requirement to have an Ohio hazardous waste permit or interim status, a generator must ensure that while hazardous waste is being accumulated on site, each container is labeled with the words "Hazardous Waste."

61. Pursuant to OAC 3745-52-34(C)(1)(b) and 40 C.F.R. § 262.34(c)(1)(ii), in order to maintain its exemption from the requirement to have an Ohio hazardous waste permit or interim status, a generator must ensure that while hazardous waste is being accumulated in satellite

containers, each satellite container is labeled with the words "Hazardous Waste" or with other words that identify the contents of the container.

62. At the time of the inspection, Respondent failed to label at least fifty-one containers holding hazardous waste clearly with the words "Hazardous Waste."

63. At the time of the inspection, Respondent failed to label or mark at least six satellite accumulation containers with the words "Hazardous Waste" or with other words that identified the containers.

64. Respondent failed to comply with conditions of the exemption from the requirement to have an Ohio hazardous waste permit or interim status pursuant to OAC 3745-52-34(A)(3) and 40 C.F.R. § 262.34(a)(3).

65. Respondent failed to comply with conditions of the exemption from the requirement to have an Ohio hazardous waste permit or interim status pursuant to OAC 3745-52-34(C)(1)(b) and 40 C.F.R. § 262.34(c)(1)(ii).

66. As a result of Respondent's failure to meet all of the applicable conditions for the generator exemption provided by OAC 3745-52-34, Respondent became an operator of a hazardous waste treatment, storage, and disposal facility, and was required to apply for and to obtain an Ohio hazardous waste permit.

67. Respondent did not apply for or obtain an Ohio hazardous waste permit.

68. Respondent's storage of hazardous waste without a permit or interim status violated Section 3005 of RCRA, 42 U.S.C. § 6925(a) and the requirements of OAC 3745-50-40 to 3745- 50-66; OAC 3745-65 to 3745-69; 40 C.F.R. Part 265; and 40 C.F.R. §§ 270.1(c), 270.10(a) and (d), and 270.13.

Count II: Hazardous Waste Determination Violations

69. Complainant incorporates paragraphs 1 through 50 of this Complaint as though set forth in this paragraph.

70. Pursuant to OAC 3745-52-11 and 40 C.F.R. § 262.11, a generator of a waste as defined in OAC 3745-51-02 shall determine if that waste is a hazardous waste.

71. Pursuant to OAC 3745-52-40(C) and 40 C.F.R. § 262.40(c), a generator must maintain records of any test results, waste analyses, or other determinations made in accordance with OAC 3745-52-11 and 40 C.F.R. § 262.11 for at least three years from the date the waste was last sent to on-site or off-site treatment, storage, or disposal.

72. During the Inspection and in the Notice of Violation, U.S. EPA identified the following materials as being potentially hazardous when discarded:

a. Oven ash;

b. Blast media – steel shot;

c. Blast media – garnet shot;

d. Paint filters;

e. Gloves generated in Building 51;

f. Off-specification powder coat from Building 71; and

g. Wash water observed in a tote on-site in 2012.

73. At all times relevant to this complaint, Respondent was a generator of all of the materials identified in paragraph 72.

74. At the time of the inspection, Respondent was managing each of the wastes identified in paragraph 72 as non-hazardous solid wastes.

75. At the time of the inspection, Respondent had not provided documentation to support non-hazardous waste determinations for any of the wastes identified in paragraph 72.

76. Subsequent to the inspection and the issuance of the NOV, in Response 2, Respondent provided waste determination documentation for the materials identified in paragraph 72.

77. Subsequent to the inspection and the issuance of the NOV, in Response 2, Respondent provided documentation supporting a hazardous waste determination in contradiction to the verbal non-hazardous waste determination stating that the oven ash is a hazardous waste proffered during the inspection.

78. Subsequent to the inspection and the issuance of the NOV, in Response 2, Respondent provided documentation stating that the blast media – steel shot is a hazardous waste that is exempt from regulation because it is recycled off-site as scrap metal under OAC 3745-51- 06(A)(3)(b) and 40 C.F.R. § 261.6(a)(3)(ii).

79. In Response 2, Respondent provided documentation supporting non-hazardous waste determinations for blast media – garnet shot, paint filters, gloves from building 51 and off- spec powder from building 71.

80. Respondent's failure to document waste determinations for the wastes identified in paragraph 70 violated Section 3005(a) of RCRA, 42 U.S.C. § 6925(a) and the regulations at OAC 3745-52-40(C) and 40 C.F.R. § 262.40(c).

Count III: Container Closure Violations

81. Complainant incorporates paragraphs 1 through 50 of this Complaint as though set forth in this paragraph.

82. Pursuant to OAC 3745-52-34(A)(1)(a), 3745-52-34(C)(1)(a), 3745-66-73(A), 40 C.F.R. §§ 262.34(a)(1)(i), 262.34(c)(1)(i) and 265.173(a), a generator must keep hazardous waste containers and hazardous waste satellite accumulation containers closed except when it is necessary to add or remove waste.

83. At the time of the inspection, Respondent failed to close four satellite containers of hazardous waste in Buildings 51 (three containers) and 81 (one container) when waste was neither being added or removed from the satellite containers.

84. At the time of the inspection, Respondent failed to close seven containers of hazardous waste in Building 41 when waste was neither being added or removed from the containers.

85. Respondent's failure to keep hazardous waste containers closed except when it is necessary to add or remove waste violated Section 3005(a) of RCRA, 42 U.S.C. § 6925(a) and the regulations at OAC 3745-52-34(A)(1)(a), 3745-52-34(C)(1)(a), 3745-66-73(A), 40 C.F.R. §§ 262.34(a)(1)(i), 262.34(c)(1)(i) and 265.173(a).

Count IV: Hazardous Waste Inspection Record-Keeping Violation

86. Complainant incorporates paragraphs 1 through 50 of this Complaint as though set forth in this paragraph.

87. Pursuant to OAC 3745-52-34(A)(1)(a), 3745-66-74, 40 C.F.R. 262.34(a)(1)(i) and 265.174, a generator must inspect, at least weekly, areas where containers of hazardous waste are stored, looking for leaks of for deterioration caused by corrosion or other factors. In the State of Ohio, these inspections must be recorded in a log or a summary.

88. At the time of the inspection, Respondent failed to document weekly inspections of the areas where containers of hazardous waste are stored.

89. At the time of the inspection, Respondent did not have a log or summary in which it had recorded any inspections.

90. Respondent's failure to document inspections of areas where containers of hazardous waste are stored violated Section 3005(a) of RCRA, 42 U.S.C. § 6925(a) and the regulations at OAC 3745-52-34(A)(1)(a), 3745-66-74, 40 CFR 262.34(a)(1)(i), and 265.174.

Count V: Container Handling Violations

91. Complainant incorporates paragraphs 1 through 50 of this Complaint as though set forth in this paragraph.

92. Pursuant to OAC 3745-52-34(A)(1)(a), 3745-66-73(B), 40 C.F.R. §§ 262.34(a)(1)(i) and 265.173(b), a generator must not open, handle, or store a container holding hazardous waste in a manner which may rupture the container or cause it to leak.

93. At the time of the inspection, a container that had held solvent-based paint waste in the hazardous waste storage area of Building 41 was punctured.

94. Respondent's opening, handling, or storing the hazardous waste container in a manner which resulted in the puncturing of the container violated Section 3005(a) of RCRA, 42 U.S.C. § 6925(a) and the regulations at OAC 3745-52-34(A)(1)(a), 3745-66-73(B), 40 C.F.R. §§ 262.34(a)(1)(i) and 265.173(b).

Count VI: Hazardous Waste Training Requirement Violations

95. Complainant incorporates paragraphs 1 through 50 of this Complaint as though set forth in this paragraph.

96. Pursuant to OAC 3745-52-34(A)(4), 3745-65-16, 40 C.F.R. §§ 262.34(a)(4) and 265.16, generator facility personnel must successfully complete a program of classroom instruction or on-the-job training that teaches them to perform their duties in a way that ensures the facility's compliance with hazardous waste requirements found in OAC 3745-65 to 3745-69 and 40 C.F.R. part 265. The generator must ensure that this program includes all the elements described in the documents required under OAC 3745-65-16(D)(3) and 40 C.F.R. § 265.16(d)(3).

97. A training program must, among other things:

a. Be directed by a person trained in hazardous waste management procedures and include instruction which teaches facility personnel hazardous waste management procedures (including contingency plan implementation) relevant to the positions in which they are employed, pursuant to 3745-65-16(A)(2) and 40 C.F.R. § 265.16(a)(2);

b. Be reviewed annually by facility personnel pursuant to 3745-65-16(C) and 40 C.F.R. § 265.16(c); and,

c. Include records of job titles and job descriptions for positions related to hazardous waste, and records of completed training or job experience given to and completed by facility personnel, pursuant to 3745-65-16(D)(1), (2), and (4) and 40 C.F.R. § 265.16(d)(1), (2), and (4).

98. At the time of the inspection, the training program offered by Respondent in 2011 did not include instruction which teaches facility personnel hazardous waste management procedures.

99. At the time of the inspection, the training program offered by Respondent in 2011 was not directed by a person trained in hazardous waste management procedures.

100. At the time of the inspection, the training program offered by Respondent in 2011 did not include records of job titles and job descriptions for positions related to hazardous waste, and records of completed training or job experience given to and completed by facility personnel.

101. Subsequent to the time of the inspection and issuance of the NOV, Respondent did not provide hazardous waste training in calendar year 2012.

102. Subsequent to the time of the inspection and issuance of the NOV, Respondent did not provide hazardous waste training in calendar year 2014.

103. Subsequent to the time of the inspection and issuance of the NOV, Respondent's hazardous waste training program did not include records of job descriptions for positions related to hazardous waste.

104. Respondent's failure to provide evidence of a comprehensive personnel training program and to maintain requisite records violated Section 3005(a) of RCRA 42 U.S.C. § 6925(a) and the regulations at OAC 3745-52-34(A)(4), 3745-65-16(A)(2), 3745-65-16(C), 345-65-16(D)(1), (2), and (4), and 40 C.F.R. §§ 262.34(a)(4); 265.16(a)(2), 265.16(c), 265.16(d)(1), (2), and (4).

Count VII: Aisle Space Violations

105. Complainant incorporates paragraphs 1 through 50 of this Complaint as though set forth in this paragraph.

106. Pursuant to OAC 3745-52-34(A)(4), 3745-65-35, 40 C.F.R. §§ 262.34(a)(4) and 265.35, the owner or operator must maintain aisle space to allow the unobstructed movement of personnel, fire protection, and decontamination equipment to any area of facility operation in an emergency, unless aisle space is not needed for any of these purposes.

107. At the time of the inspection, aisle in the hazardous waste storage areas inside and outside Building 41 were insufficient for the unobstructed movement of emergency personnel and equipment.

108. Respondent's failure to maintain aisle space in the hazardous waste storage areas violated Section 3005(a) of RCRA 42 U.S.C. § 6925(a) and the regulations at OAC 3745-65-35 and 40 C.F.R. § 265.35.

Count VIII: Contingency Plan Violations

109. Complainant incorporates paragraphs 1 through 50 of this Complaint as though set forth in this paragraph.

110. Pursuant to OAC 3745-52-34(A)(4), 3745-65-51(a), 40 C.F.R. §§ 262.34(a)(4) and 265.51(a), a generator must have a contingency plan for its facility.

111. A contingency plan must, among other things, include the following aspects:

a. A description of the arrangements agreed to by local police departments, fire departments, hospitals, contractors, and state and local emergency response teams to coordinate emergency services pursuant to OAC 3745-65-52(C) and 40 C.F.R. § 265.52(c);

b. A list of names, address, and phone numbers (office and home) of all persons qualified to act as emergency coordinator pursuant to OAC 3745-65-52(D) and 40 C.F.R. § 265.52(d); and

c. A list of emergency equipment including the location, description, and capability of each item pursuant to OAC 3745-65-52(E) and 40 C.F.R. § 265.52(e).

112. Pursuant to OAC 3745-52-34(A)(4), 3745-65-53(B), 40 C.F.R. §§ 262.34(a)(4) and 265.53(b), the contingency plan must be submitted to all emergency service providers as described in paragraph 111.a., above.

113. Pursuant to OAC 3745-52-34(A)(4), 3745-65-54(C), 40 C.F.R. §§ 262.34(a)(4) and 265.54(c), the contingency plan must be reviewed, and immediately amended, if necessary, whenever the facility changes in a way that materially increases the potential for fires, explosions, or releases of hazardous waste or hazardous waste constituents, or changes the response necessary in an emergency.

114. At the time of the inspection, Respondent's Emergency Action Plan ("contingency plan") did not include the following information:

a. a description of arrangements made with the local emergency planning committee;

b. addresses of emergency coordinators; and,

c. locations of spill response equipment.

115. At the time of the inspection, evidence that the plan had been submitted to all emergency service providers was not available.

116. At the time of the inspection, the contingency plan had not been amended to include construction additions to the Building 51 Paint Shop or to include the new shed for hazardous waste storage and spent solvent reclamation.

117. Respondent's failure to fulfill the requirements of the contingency plan violated Section 3005(a) of RCRA 42 U.S.C. § 6925(a) and the regulations at OAC 3745-65-52(c), (d), and (e); 3745-65-53(B); 3745-65-54(C); 40 C.F.R. §§ 265.52(c), (d), and (e); 265.53(b); and 265.54(c).

Count IX: Failure to Determine Underlying Hazardous Constituents

118. Complainant incorporates paragraphs 1 through 50 of this Complaint as though set forth in this paragraph.

119. Pursuant to OAC 3745-270-09(A) and 40 C.F.R. § 268.9(a), an owner or operator must determine if potential underlying hazardous constituents exist for characteristic wastes that exceed treatment standards.

120. At the time of the inspection, Respondent had not determined any underlying hazardous constituents for its hazardous waste.

121. At the time of the inspection, Respondent's disposal restriction notification forms filed with manifests did not identify any underlying characteristics.

122. Subsequent to the inspection and the issuance of the NOV, Respondent identified acetone, n-butyl alcohol, ethyl benzene, methyl ethyl ketone, methyl isobutyl ketone, methyl methacrylate, naphthalene, toluene, xylene, and zinc as potential underlying hazardous constituents for its solvent-based paint wastes.

123. Respondent's failure to identify potential underlying hazardous constituents for wastes generated at its Facility violated Section 3005(a) of RCRA 42 U.S.C. § 6925(a) and the regulations at OAC 3745-270-09(A) and 40 C.F.R. § 268.9(a).

Civil Penalty

124. Pursuant to Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), Complainant determined that an appropriate civil penalty to settle this action is $57,520. In determining the penalty amount, Complainant took into account the seriousness of the violation and any good faith efforts to comply with the applicable requirements and Respondent's agreement to perform a supplemental environmental project. Complainant also considered U.S. EPA's RCRA Civil Penalty Policy, dated June 23, 2003.

125. Respondent must pay a $57,520 civil penalty in three installments with interest as follows:

	Due by:	Principal ($)	Interest (1%) ($)	Payment ($)
Installment 1	Within 30 Days of Effective Date of CAFO	19,174.00	47.93	**19,221.93**
Installment 2	Within 180 Days of Effective Date of CAFO	19,173.00	159.78	**19,332.78**
Installment 3	Within 360 Days of Effective Date of CAFO	19,173.00	95.87	**19,268.87**
	Totals:	57,520	303.57	**57,823.57**

Respondent must pay the installments by sending certified checks, payable to "Treasurer, United States of America," to:

[for checks sent by regular U.S. Postal Service mail]
U.S. EPA
Fines and Penalties Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

[for checks sent by express mail]
U.S. Bank
Government Lockbox 979077 U.S. EPA Fines and Penalties 1005
Convention Plaza
Mail Station SL-MO-C2-GL St. Louis, MO 63101

The check must state Colonial Surface Solutions, Inc. and the docket number of this CAFO.

126. A transmittal letter stating Respondent's name, the case title and the case docket number must accompany the payment. Respondent must send a copy of the check and transmittal letter to:

Regional Hearing Clerk (E-19J)
U.S. EPA, Region 5 77 West Jackson Blvd. Chicago, IL 60604

Brenda Whitney (LR-8J) RCRA Branch
U.S. EPA, Region 5 77 West Jackson Blvd. Chicago, IL 60604

Erik Olson (C-14J)
Office of Regional Counsel
U.S. EPA, Region 5 77 West Jackson Blvd. Chicago, IL 60604

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

128. If Respondent does not pay an installment payment as set forth in paragraph 125, above, or timely pay any stipulated penalties due under paragraph 143, below, the entire unpaid balance of the civil and stipulated penalties and any amount required by paragraph 130, below, shall become due and owing upon written notice by U.S. EPA to Respondent of the delinquency.

129. U.S. EPA may bring an action to collect any unpaid portion of the penalty with interest, handling charges, nonpayment penalties, and the United States enforcement expenses for the collection action. The validity, amount, and appropriateness of the civil penalty are not reviewable in a collection action.

130. Pursuant to 31 C.F.R. § 901.9, Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any amount overdue from the date payment was due at a rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717(a)(1).

131. Respondent must pay a $15 handling charge each month that any portion of the penalty is more than 30 days past due. In addition, Respondent must pay a 6 percent per year penalty on any principal amount 90 days past due.

Supplemental Environmental Project

132. Respondent must complete a supplemental environmental project (SEP) designed to protect the environment and public health in the following ways:

- Reduce emissions generated by the current ovens by at least 26% (yearly reduction of 0.3 tons of SO_2, 0.37 tons of NO_x, 0.3 tons of CO, 17,573 tons of CO_2, and 0.3 tons of CH_4);
- use less energy than the existing ovens saving at least 375 ft^3 of natural gas per oven cycle; and,
- improve safety and handling of hazardous materials by providing oven carts equipped with ash pans for the collection of oven ash generated during the heat-cleaning process.

133. At its facility, Respondent must complete the SEP as follows: Respondent uses heat- cleaning or "burn-off" ovens to remove coatings from metal as part of its business process. Within 180 days of the effective date of this CAFO, Respondent must replace its existing two burn-off ovens with a single new oven, including removal of existing ovens, building modification, equipment procurement, installation, testing and start-up. The oven must be equivalent to or better than a Steelman Advanced Series Burn-Off Oven, Model 101110 BA-C High Fire Oven.

134. Respondent must spend at least $115,509 to remove the old burn-off ovens, to reconfigure the facility space, and to purchase and install the equipment.

135. Respondent must continuously use or operate new burn-off oven for at least 3 years following its installation.

136. Respondent certifies that it is not required to perform or develop the SEP by any law, regulation, grant, order, or agreement, or as injunctive relief as of the date it signs this CAFO. Respondent further certifies that it has not received, and is not negotiating to receive, credit for the SEP in any other enforcement action.

137. U.S. EPA may inspect the facility at any time during the three years following installation of the new burn off oven to monitor Respondent's compliance with this CAFO's SEP requirements.

138. Respondent must submit a SEP completion report to U.S. EPA by no later than one year after the effective date of this CAFO. This report must contain the following information:

d. Detailed description of the SEP as completed;

e. Description of any operating problems and the actions taken to correct the problems;

f. Itemized costs of goods and services used to complete the SEP documented by copies of invoices, purchase orders, or canceled checks that specifically identify and itemize the individual costs of the goods and services;

g. Certification that Respondent has completed the SEP in compliance with this CAFO; and

h. Description of the environmental and public health benefits resulting from the SEP (quantify the benefits and pollution reductions, if feasible).

139. Respondent must submit all notices and reports required by this CAFO by first class or overnight mail to Brenda Whitney of the RCRA Branch.

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

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

141. Following receipt of the SEP completion report described in paragraph 138, above, U.S. EPA must notify Respondent in writing that:

a. Respondent has satisfactorily completed the SEP and the SEP report;

b. There are deficiencies in the SEP as completed or in the SEP report and U.S. EPA will give Respondent 30 days to correct the deficiencies; or

c. It has not satisfactorily completed the SEP or the SEP report and U.S. EPA will seek stipulated penalties under paragraph 143.

142. If U.S. EPA exercises option b, above, Respondent may object in writing to the deficiency notice within ten days of receiving the notice. The parties will have 30 days from U.S. EPA's receipt of Respondent's objection to reach an agreement. If the parties cannot reach an agreement, U.S. EPA will give Respondent a written decision on its objection. Respondent will comply with any requirements that U.S. EPA imposes in its decision. If Respondent does not complete the SEP as required by U.S. EPA's decision, Respondent will pay stipulated penalties to the United States under paragraph 143, below.

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

a. Except as provided in subparagraph b, below, if Respondent did not complete the SEP satisfactorily according to the requirements of this CAFO including the schedule in paragraph 133, Respondent must pay a penalty of $86,100.

b. If Respondent did not complete the SEP satisfactorily, but U.S. EPA determines that Respondent (i) made good faith and timely efforts to complete the SEP and (ii) certified, with supporting documents, that it spent at least 90 percent of the amount set forth in paragraph 134, Respondent will not be liable for a stipulated penalty under subparagraph a, above.

c. If Respondent completed the SEP satisfactorily, but spent less than 90 percent of the amount set forth in paragraph 134, Respondent must pay a penalty of $21,525.

d. If Respondent did not timely submit the SEP completion report, Respondent must pay penalties in the following amounts for each day after the report was due until it submits the report:

Penalty per violation per day	Period of violation
$250	1st through 14th day
$500	15th through 30th day
$1000	31st day and beyond

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

145. Respondent must pay any stipulated penalties within 15 days of receiving U.S. EPA's written demand for the penalties. Respondent will use the method of payment specified in paragraph 125, above, and will pay interest, handling charges, and nonpayment penalties on any overdue amounts.

146. Any public statement that Respondent makes referring to the SEP must include the following language, "Colonial Surface Solutions, Inc. undertook this project under the settlement of the United States Environmental Protection Agency's enforcement action against Colonial Surface Solutions, Inc. for violations of the Resource Conservation and Recovery Act."

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

a. Respondent must notify U.S. EPA in writing within ten days after learning of an event which caused or may cause a delay in completing the SEP. The notice must describe the anticipated length of the delay, its cause(s), Respondent's past, current and proposed actions to prevent or minimize the delay, and a schedule to carry out those actions. Respondent must take all reasonable actions to avoid or minimize any delay. If Respondent fails to notify U.S. EPA according to this paragraph, Respondent will not receive an extension of time to complete the SEP.

b. If the parties agree that circumstances beyond the control of Respondent caused or may cause a delay in completing the SEP, the parties will stipulate to an extension of time no longer than the period of delay.

c. If U.S. EPA does not agree that circumstances beyond the control of Respondent caused or may cause a delay in completing the SEP, U.S. EPA will notify Respondent in writing of its decision and any delay in completing the SEP will not be excused.

d. Respondent has the burden of proving that circumstances beyond its control caused or may cause a delay in completing the SEP. Increased costs for completing the SEP will not be a basis for an extension of time under subparagraph b, above. Delay in achieving an interim step will not necessarily justify or excuse delay in achieving subsequent steps.

148. Nothing in this CAFO is intended to, nor will be construed to, constitute U.S. EPA approval of the equipment or technology installed by the Respondent in connection with the SEP under this CAFO.

149. For Federal Income Tax purposes, Respondent will neither capitalize into inventory or basis, nor deduct any costs or expenditures incurred in performing the SEP.

General Provisions

150. Consistent with the "Standing Order Authorizing E-Mail Service of Order and Other Documents Issued by the Regional Administrator or Regional Judicial Officer Under the Consolidated Rules," dated March 27, 2015, the parties consent to service of this CAFO by e-mail at the following valid e-mail addresses: olson.erik@epa.gov (for Complainant), and snelson@snlaw.com (for Respondent). The parties waive their right to service by the methods specified in 40 C.F.R. §22.6.

151. This CAFO resolves only Respondent's liability for federal civil penalties for the violations and facts alleged in the CAFO.

152. This CAFO does not affect the right of U.S. EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

153. This CAFO does not affect Respondent's responsibility to comply with RCRA and other applicable federal, state, local laws or permits.

154. This CAFO is a "final order" for purposes of 40 C.F.R. § 22.31, U.S. EPA's RCRA Civil Penalty Policy, and U.S. EPA's Hazardous Waste Civil Enforcement Response Policy (December 2003).

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

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

157. Each party agrees to bear its own costs and attorney's fees in this action.

158. This CAFO constitutes the entire agreement and understanding between the parties with respect to the settlement embodied in this CAFO and supersedes all prior agreements and understandings, whether oral or written, concerning the settlement embodied herein.

Colonial Surface Solutions, Inc., Respondent

3-20-17
Date

CHAD SELLMAN
Colonial Surface Solutions, Inc.

United States Environmental Protection Agency, Complainant

04-05-17
Date

Ignacio L. Arrázola
Acting Director
Land and Chemicals Division

In the Matter of:
Colonial Surface Solutions, Inc.
Docket No. RCRA-05-2017-0010

Final Order

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

April 6, 2017
Date

Ann L. Coyle
Regional Judicial Officer
United States Environmental Protection Agency
Region 5

338023_2

In the matter of: **Colonial Surface Solutions, Inc.**
EPA ID Number: OHR000108035
Docket Number: **RCRA-05-2017-0010**

CERTIFICATE OF SERVICE

I certify that I served a true and correct copy of the foregoing **Consent Agreement and Final Order**, Docket Number **RCRA-05-2017-0010**, which was filed on April 6, 2017, in the following manner to the addressees:

Copy by e-mail to Respondent: **(Authorized in CAFO)**	Susan Nelson (Representative for Respondent) snelson@snlaw.com
Copy by e-mail to Attorney for Complainant:	Erik Olson olson.erik@epa.gov
Copy by e-mail to Case Assignee:	Brenda Whitney whitney.brenda@epa.gov
Copy by e-mail to Regional Judicial Officer:	Ann Coyle coyle.ann@epa.gov

Dated: April 6, 2017 LaDawn Whitehead

LaDawn Whitehead
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 5