

EPA ENFORCEMENT ACCOUNTS RECEIVABLE CONTROL NUMBER FORM

TO BE FILLED OUT BY ORIGINATING OFFICE:

(Attach a copy of the final order and transmittal letter to Defendant/Respondent)

This form was originated by: Brianna Tindall
Name of Contact person

Date

in the Office of Regional Counsel, R III
Office

at (215) 814-2623
Phone number

____ Non-SF Jud. Order/Consent Decree. DOJ COLLECTS

Administrative Order/ Consent Agreement
FMD COLLECTS PAYMENT

____ SF Jud. Order/Consent Decree. FMD COLLECTS

____ This is an original debt

____ This is a modification

Name of Person and/or Company/Municipality making the payment

Old Colony Company

The Total Dollar Amount of Receivable \$ 29,459.92 (see attached installment schedule)
(If in installments, attach schedule of amounts and respective due dates)

The Case Docket Number TSCA-03-2008-0386

The Site-Specific Superfund Acct. Number _____

The Designated Regional/HQ Program Office Office of Toxics and Pesticides

TO BE FILLED OUT BY LOCAL FINANCIAL MANAGEMENT OFFICE:

The IFMS Accounts Receivable Control Number _____

If you have any questions call: _____

Name of Contact

Date

in the Financial Management Office, phone number: _____

JUDICIAL ORDERS: Copies of this form with an attached copy of the front page of the final judicial order should be mailed to:

1. U.S. Environmental Protection Agency
Cincinnati Finance Center
26 W. Martin Luther King Drive (MS-002)
Cincinnati, OH 45268

Attn: Lori Weidner

2. Originating Office (ORC)
3. Designated Program Office

ADMINISTRATIVE ORDERS: Copies of this form with an attached copy of the front page of the administrative order should be sent to:

1. Originating Office
2. Designated Program Office
3. Regional Hearing Clerk
3. Regional Counsel

**BEFORE THE UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION III**

In the Matter of:

**OLD COLONY COMPANY
1205 Virginia Street, E
Charleston, WV 25301**

Respondent.

2008-03-23
U.S. EPA Docket No.
TSCA-03-2008-0386
Proceeding under Sections 409
and 16(a) of the Toxic Substances
Control Act, 15 U.S.C. §§ 2689
and 2615(a)

CONSENT AGREEMENT

I. PRELIMINARY STATEMENT

1. This Consent Agreement is entered into by the Director of the Land and Chemicals Division, U. S. Environmental Protection Agency, Region III ("Complainant") and Old Colony Company ("Respondent") pursuant to Sections 409 and 16(a) of the Toxic Substances Control Act ("TSCA"), 15 U.S.C. §§ 2689 and 2615(a), the federal regulations set forth at 40 C.F.R. Part 745, Subpart F (the "Disclosure Rule"), 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.
2. The claims settled herein pertain to the Respondent's alleged failure to comply with requirements of the Residential Lead-Based Paint Hazard Reduction Act of 1992 ("RLBPHRA"), 42 U.S.C. §§ 4851 *et seq.*, and regulations promulgated thereunder, as set forth in 40 C.F.R. Part 745, Subpart F, as set forth in the Administrative Complaint and Notice of Opportunity for Hearing ("Complaint") filed against Respondent on September 15, 2008. Such statutory and regulatory provisions are enforceable pursuant to RLBPHRA Section 1018(b)(5), 42 U.S.C. § 4852d(b)(5), and Section 409 of TSCA, 15 U.S.C. § 2689.

II. JURISDICTION

3. The U.S. Environmental Protection Agency ("EPA") and the Office of Administrative Law Judges of the EPA have jurisdiction over the above-captioned matter pursuant to Sections 16 and 409 of TSCA, 15 U.S.C. §§ 2615 and 2689, Section 1018 of Title X of the RLBPHRA, 42 U.S.C. § 4852d, 40 C.F.R. Part 745, Subpart F, and 40 C.F.R. §§ 22.1(a)(5) and 22.4 of the *Consolidated Rules of Practice*.

III. GENERAL PROVISIONS

4. For purposes of this proceeding, Respondent admits the jurisdictional allegations set forth in the Complaint, in this Consent Agreement, and the attached Final Order.
5. Except as provided in Paragraph 4, immediately above, for the purposes of this proceeding only, Respondent neither admits nor denies the specific factual allegations set forth in the Complaint and this Consent Agreement.
6. 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 (collectively, the "CA/FO"), or the enforcement thereof.
7. For purposes of this proceeding only, Respondent hereby expressly waives any right to contest any issue of law or fact set forth in the Complaint or this Consent Agreement and any right to appeal the accompanying Final Order.
8. Respondent consents to the issuance of this CA/FO and agrees to comply with its terms and conditions.
9. Each Party to this Consent Agreement shall bear its own costs and attorney's fees.

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

10. The Findings of Fact and Conclusions of Law set forth in the Complaint are incorporated into this Consent Agreement as if fully set forth at length herein.

V. CIVIL PENALTY

11. In settlement of Complainant's claims for civil penalties for the violations alleged in the Complaint and this CA, Respondent agrees to pay a civil penalty in the amount of Twenty Nine Thousand One Hundred and Nine Dollars (\$ 29,109.00), and perform the Supplemental Environmental Project ("SEP") described in Paragraphs 19 through 29 in this CA. Such civil penalty shall become due and payable immediately upon Respondent's receipt of a true and correct copy of the CA/FO. In order to avoid the assessment of interest, administrative costs and late payment penalties in connection with such civil penalty, Respondent must pay such civil penalty no later than thirty (30) calendar days after the date on which this CA/FO is mailed or hand-delivered to Respondent. Respondent has asserted that it will not be able to pay the civil penalty amount in full within thirty (30) calendar days of the date on which this CA/FO is mailed or hand-delivered to Respondent. As a result, it is the understanding of the parties that Respondent will pay the civil penalty in nine of installments and will pay interest at the

rate of three percent (3%) on the outstanding principal balance according to the schedule in Paragraph 15.

12. Respondent consents to the issuance of this Consent Agreement and consents for the purposes of settlement to the payment of the civil penalty cited in the foregoing paragraph and to the performance of the SEP.
13. The Parties agree and represent that the aforesaid settlement amount is reasonable and is based upon Complainant's consideration of a number of factors, including the penalty criteria set forth in Section 16(a)(2)(B) of TSCA, 15 U.S.C. § 2615(a)(2)(B), *i.e.*, the nature, circumstances, extent and gravity of the violations, and with respect to the Respondent, ability to pay, effect on ability to continue to do business, any history of prior such violations, the degree of culpability, and such other matters as justice may require. These factors were applied to the particular facts and circumstances of this case with specific reference to EPA's *Real Estate Notification and Disclosure Rule: Final Enforcement Response Policy* (February 2000) and *Section 1018 - Disclosure Rule Enforcement Response and Penalty Policy* (December 2007).
14. 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.
 - a. Interest on a civil penalty assessed in a Consent Agreement and Final Order begins to accrue on the date that a copy of such Consent Agreement and Final Order is mailed or hand-delivered to a respondent. EPA does not seek to recover interest on any amount of the civil penalty that is paid within thirty (30) calendar days after the date on which such interest begins to accrue. Interest on the portion of the civil penalty not paid within 30 calendar days 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). Accordingly, interest payments on the outstanding portion of the civil penalty to be paid in installments as set forth in the payment schedule, below, to which Respondent agrees, are shown in Paragraph 15, below.
 - b. The costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue. 40 C.F.R. § 13.11(b). Pursuant to Appendix 2 of EPA's *Resources Management Directives - Cash 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.

- c. A penalty charge of six percent per year will be assessed monthly on any portion of the civil penalty which 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).
 - d. In order to avoid the assessment of administrative costs for overdue debts, as described above, Respondent must remit installment payments for the civil penalty and accrued interest in accordance with the payment schedule set forth in Paragraph 15, below. In order to avoid the assessment of late payment penalty charges, as described above, Respondent must remit all payments not later than 90 days after they become delinquent.
15. The civil penalty of Twenty Nine Thousand and Eight Dollars (\$ 29,109.00) set forth in Paragraph 11, above, shall be paid in nine (9) installments with interest at the rate of three percent (3%) per annum on the outstanding principal balance in accordance with the following schedule:
- a. 1st Payment: The first payment in the amount of three thousand two hundred and thirty-four dollars and thirty-three cents (\$ 3,234.33), consisting of a principal payment of \$ 3,234.33 and an interest payment of \$ 0.00, shall be paid within thirty (30) days after the date on which a copy of this Consent Agreement and Final Order is mailed or hand-delivered to Respondent.
 - b. 2nd Payment: The second payment in the amount of three thousand three hundred and sixty-one dollars and ninety-three cents (\$ 3,361.93), consisting of a principal payment of \$ 3,234.33 and an interest payment of \$ 127.60, shall be paid within sixty (60) days after the date on which a copy of this Consent Agreement and Final Order is mailed or hand-delivered to Respondent.
 - c. 3rd Payment: The third payment in the amount of three thousand two hundred and ninety dollars and sixteen cents (\$ 3,290.16), consisting of a principal payment of \$ 3,234.33 and an interest payment of \$ 55.83, shall be paid within ninety (90) days after the date on which a copy of this Consent Agreement and Final Order is mailed or hand-delivered to Respondent.
 - d. 4th Payment: The fourth payment in the amount of three thousand two hundred and eighty-two dollars and eighteen cents (\$ 3,282.18), consisting of a principal payment of \$ 3,234.33 and an interest payment of

\$ 47.85, shall be paid within one hundred twenty (120) days after the date on which a copy of this Consent Agreement and Final Order is mailed or hand-delivered to Respondent.

- e. 5th Payment: The fifth payment in the amount of three thousand two hundred and seventy-four dollars and twenty-one cents (\$ 3,274.21), consisting of a principal payment of \$ 3,234.33 and an interest payment of \$ 39.88, shall be paid within one hundred fifty (150) days after the date on which a copy of this Consent Agreement and Final Order is mailed or hand-delivered to Respondent.
- f. 6th Payment: The sixth payment in the amount of three thousand two hundred and sixty-six dollars and twenty-three cents (\$ 3,266.23), consisting of a principal payment of \$ 3,234.33 and an interest payment of \$ 31.90, shall be paid within one hundred eighty (180) days after the date on which a copy of this Consent Agreement and Final Order is mailed or hand-delivered to Respondent.
- g. 7th Payment: The seventh payment in the amount of three thousand two hundred and fifty-eight dollars and twenty-six cents (\$ 3,258.26), consisting of a principal payment of \$ 3,234.33 and an interest payment of \$ 23.93, shall be paid within two hundred ten (210) days after the date on which a copy of this Consent Agreement and Final Order is mailed or hand-delivered to Respondent.
- h. 8th Payment: The eighth payment in the amount of three thousand two hundred and fifty dollars and twenty-eight cents (\$ 3,250.28), consisting of a principal payment of \$ 3,234.33 and an interest payment of \$ 15.95, shall be paid within two hundred forty (240) days after the date on which a copy of this Consent Agreement and Final Order is mailed or hand-delivered to Respondent.
- i. 9th Payment: The ninth and final payment in the amount of three thousand two hundred and forty-two dollars and thirty-four cents (\$ 3,242.34), consisting of a principal payment of \$ 3,234.36 and an interest payment of \$ 7.98, shall be paid within two hundred seventy (270) days after the date on which a copy of this Consent Agreement and Final Order is mailed or hand-delivered to Respondent.

Pursuant to the above schedule, Respondent will remit total principle payments for the civil penalty in the amount of twenty-nine thousand one hundred and nine dollars (\$29,109.00) and total interest payments in the amount of three hundred and fifty dollars

and ninety-two cents (\$ 350.92).

16. If Respondent fails to make one of the installment payments in accordance with the schedule set forth in Paragraph 15, above, the entire unpaid balance of the penalty and all accrued interest shall become due immediately upon such failure, and Respondent shall *immediately* pay the entire remaining principal balance of the civil penalty along with any interest that has accrued up to the time of such payment. In addition, Respondent shall be liable for and shall pay administrative handling charges and late payment penalty charges as described in Paragraph 14, above, in the event of any such failure or default. Nothing in this paragraph shall be construed to alter the Claim Collection Standards of 40 C.F.R. Part 13.

17. Payment of the civil penalty amount described in Paragraph 11, above, shall be made by either cashier's check, certified check or electronic wire transfer, in the following manner:

- a. All payments by Respondents shall reference their names and addresses, and the Docket Number of this action, *i.e.*, TSCA-03-2008-0386;
- b. All checks shall be made payable to "**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—Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

Contact: Natalie Pearson, 314-418-4087

- d. All payments made by check and sent by overnight delivery service shall be addressed and mailed to:

U.S. Environmental Protection Agency—Fines and Penalties
U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, MO 63101

Contact: Natalie Pearson, 314-418-4087

- e. All payments made by electronic wire transfer shall be directed to:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045

Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency"

- f. All electronic payments made through the automated clearinghouse (ACH), also known as Remittance Express (REX), shall be directed to:

Automated Clearinghouse (ACH) for receiving US currency
PNC Bank
808 17th Street, NW
Washington, DC 20074
Contact: Jesse White 301-887-6548

ABA = 051036706
Transaction Code 22 - Checking
Environmental Protection Agency
Account 310006
CTX Format

- g. On-Line Payment Option:

WWW.PAY.GOV

Enter sfo 1.1 in the search field. Open and complete the form.

- h. The customer service phone numbers for the above payment centers are:

212-720-5000 (wire transfers, Federal Reserve Bank of New York)

800-762-4224 (ACH/Wire Info, PNC Bank)

Additional payment guidance is available at:

http://www.cpa.gov/ocfo/finservices/make_a_payment_cin.htm

- i. Copies of all checks and/or copies of all electronic fund transfers made in payment of the penalty described in Paragraph 11 shall be sent simultaneously to:

Kyle Chelius
U.S. Environmental Protection Agency
Region III (Mail Code 3LC61)
1650 Arch Street
Philadelphia, PA 19103-2029

and

Ms. Lydia Guy
Regional Hearing Clerk
U.S. Environmental Protection Agency
Region III (Mail Code 3RC00)
1650 Arch Street
Philadelphia, PA 19103-2029

18. The Respondent agrees not to deduct for federal tax purposes the civil monetary penalty specified in this Consent Agreement and the accompanying Final Order. Respondent further agrees, for federal income tax purposes, that it will neither capitalize into inventory or basis nor deduct any costs or expenditures incurred in performing the SEP.

VI. SUPPLEMENTAL ENVIRONMENTAL PROJECT

19. Respondent shall complete the following SEP, which the parties agree is intended to secure significant environmental or public health protections. Not more than 30 days after receiving a true and correct copy of this fully executed and effective CA/FO, Respondent shall commence the Lead Disclosure Rule Compliance Promotion Project as described in the SEP Statement of Work ("SEP SOW") appended to this Consent Agreement as Attachment A.
20. The SEP SOW (Attachment A) shall be fully implemented within twelve months of the effective date of this CA/FO.
21. The total expenditures by Respondent for the design, development, installation, and implementation of the SEP ("Required SEP Expenditures") shall not be less than twenty thousand one hundred and seventy-two dollars (\$20,172.00). Respondent shall include documentation of the expenditures made in connection with the SEP as part of the SEP Completion Report.
22. Respondent hereby certifies that, as of the date of this Consent Agreement, Respondent is

not required to perform or develop the SEP by any federal, state or local law or regulation; nor is Respondent required to perform or develop the SEP by any other agreement, or grant, or as injunctive relief in this or any other case. Respondent further certifies that it has not received, and is not presently negotiating to receive, credit in any other enforcement action for the SEP or any portion thereof.

23. Respondent shall submit a SEP Completion Report to EPA no later than thirteen months after the effective date of this CA/FO. The SEP Completion Report shall have the following information:
 - a. A detailed description of the SEP as implemented, describing how the SEP has fulfilled all of the requirements described in the SEP SOW;
 - b. A description of any problems encountered and the solutions utilized by Respondent to address such problems;
 - c. An itemization of costs incurred in implementing the SEP. In itemizing its costs in the SEP Completion Report, Respondent shall clearly identify and provide acceptable documentation for all Required SEP Expenditures for which Respondent seeks approval by EPA in accordance with Paragraph 28, below. Where the SEP Completion Report includes costs incurred by Respondent not eligible for SEP credit, such costs must be clearly identified in the SEP Completion Report as ineligible for SEP credit. For purposes of this paragraph, "Eligible SEP Expenditures" shall include the costs for the design, development, and implementation of the Lead Disclosure Rule Compliance Promotion Project as specified in the SEP SOW;
 - d. Certification in accordance with Paragraph 27 of this CA/FO that the SEP has been fully implemented pursuant to the provisions of this CA/FO, and
 - e. A description and a quantitative and qualitative estimation of the environmental and public health benefits resulting from implementation of the SEP.
24. Failure to submit the SEP Completion Report required by Paragraph 23, above, shall be a violation of this CA/FO and Respondent shall become liable for stipulated penalties for such violation pursuant to Paragraph 32, below.
25. In itemizing its costs in the SEP Completion Report, Respondent shall clearly identify and provide acceptable documentation for all SEP Expenditures. For purposes of this paragraph, "acceptable documentation" for itemizing SEP Expenditures includes invoices, purchase orders, canceled checks, or other documentation that specifically identifies and itemizes the SEP Expenditures of the goods and/or services for which

payment has been made by Respondent. Canceled drafts do not constitute acceptable documentation unless such drafts specifically identify and itemize the individual cost of the goods and/or services for which payment is being made.

26. EPA may inspect any location listed in the SEP SOW at any time to confirm that the SEP is being undertaken in conformity with the specifications referenced herein.
27. Respondent shall maintain legible copies of documentation of the underlying research and data for any and all documents or reports submitted to EPA pursuant to this Consent Agreement and shall provide the documentation of any such underlying research and data to EPA not more than seven days after a request for such information. In all documents or reports, including, without limitation, any SEP reports, submitted to EPA pursuant to this Consent Agreement, Respondent shall, by its officers, sign and certify under penalty of law that the information contained in such document or report is true, accurate, and not misleading by signing the following statement:

I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment.

28. After receipt of the SEP Completion Report described in Paragraph 23, above, EPA shall:
 - a. Notify Respondent in writing of any deficiency in the SEP Completion Report itself ("Notice of Deficiency") and grant an additional THIRTY (30) DAYS for Respondent to correct the deficiency;
 - b. Notify Respondent in writing of EPA's determination that the project has been completed satisfactorily ("Notice of Approval"); or
 - c. Notify Respondent in writing that the project has not been completed satisfactorily ("Notice of Disapproval"), in which case, EPA may seek stipulated penalties in accordance with Paragraph 32 herein.
29. Respondent agrees to comply with any requirements imposed by EPA as a result of any failure to comply with the terms of this CA/FO. If EPA, in its sole discretion and after completion of the Dispute Resolution process set forth below in Paragraphs 30 and 31 of this CA/FO, if applicable, determines that the SEP and/or any report pursuant to this CA/FO has not been completed as set forth herein, stipulated penalties shall be due and payable by Respondent to EPA in accordance with Paragraph 32 herein.

DISPUTE RESOLUTION

30. If EPA issues a written Notice of Disapproval rejecting a SEP Completion Report pursuant to Paragraph 28.c, above, EPA shall grant Respondent the opportunity to object in writing to such notification of disapproval within twenty (20) days of receipt of EPA's notification. EPA and Respondent shall have an additional thirty (30) days from the date of receipt by the EPA of the objection by Respondent to resolve and reach an agreement on the matter in dispute. If an agreement cannot be reached within such thirty (30) day period, EPA shall provide to Respondent a written Statement of Decision and the rationale therefor.
31. In the event EPA determines after the expiration of the aforesaid 30-day dispute resolution period that a SEP has not been completed as specified herein or has issued a written Notice of Disapproval for which a timely objection has not been filed by Respondent as provided in Paragraph 30, above, stipulated penalties shall be due and payable by Respondent to EPA in accordance with Paragraph 32 of this CA/FO. The submission of an unacceptable SEP Completion Report shall be the equivalent of the failure to submit a timely SEP Completion Report for purposes of the stipulated penalty provisions set forth in Paragraph 32, below, except that the calculation of any such stipulated penalties shall not run during the pendency of the dispute resolution procedure set forth in Paragraph 30, above, but shall instead run from the date on which Respondent receives EPA's Statement of Decision pursuant to Paragraph 30, above, or, in the event that Respondent has not filed a timely objection to an EPA notice of disapproval, the date following the day of expiration of the 30-day dispute resolution period.

STIPULATED PENALTIES

32. In the event that Respondent fails to comply with any of the terms or conditions of this Consent Agreement relating to the performance of the SEP as described in Paragraphs 19 through 29, above, and to the extent that the Actual SEP Expenditures approved by EPA pursuant to Paragraph 28 of this CA, do not equal or exceed the amount of the Required SEP Expenditures required to be incurred under Paragraph 21 of this CA, Respondent shall be liable for stipulated penalties according to the provisions set forth below:
- a. Except as provided in subparagraph (b) immediately below, for a SEP which has not been completed satisfactorily pursuant to this CA/FO, Respondent shall pay a stipulated penalty of ten thousand and eighty-six dollars (\$ 10,086.00);
 - b. If the SEP is not completed in accordance with Paragraphs 19 - 29, but the Complainant determines that Respondent: (i) has made good faith and timely efforts to complete the project; and (ii) has certified, with supporting

documentation, that at least 90% of the Required SEP Expenditures under Paragraph 21 of this CA were expended on the SEP, Respondent shall not be liable for any stipulated penalty;

- c. If the SEP is completed satisfactorily in accordance with Paragraphs 19 - 29 but Respondent spends less than 90% of the amount of SEP Expenditures required to be incurred under Paragraph 21 of this CA, Respondent shall pay as an additional penalty an amount up to but not to exceed \$ 10,086.00, calculated as follows:

$$(\$ 10,086.00) - [\text{minus}] (\text{Total Approved SEP Expenditures} \times [\text{multiplied by}] .5) = [\text{equals}] \text{Additional Penalty.}$$

- d. If the SEP is completed in accordance with Paragraphs 19 - 29, and the Respondent spent at least 90% of the Actual SEP Expenditures required to be incurred under Paragraph 21 of this CA, Respondent shall not be liable for any stipulated penalty;
- e. For failure to submit the SEP Completion Report required by Paragraph 23, above, Respondent shall pay a stipulated penalty of FIVE HUNDRED DOLLARS (\$500) for each day after the deadline set forth in Paragraph 23 until the report is submitted.
33. The determination of whether the SEP has been satisfactorily completed and whether Respondent has made a good faith timely effort to implement the SEP shall be within the sole discretion of EPA after completion of the Dispute Resolution process set forth above in Paragraphs 30 and 31 of this CA/FO, if applicable.
34. Stipulated penalties for subparagraph 32(e), above, shall begin to accrue on the day after performance is due, and shall continue to accrue through the final day of the completion of the activity.
35. In no event shall the total of stipulated penalties, plus one half of any SEP Expenditures approved by EPA pursuant to Paragraph 21 of this CA/FO, exceed ten thousand and eighty-six dollars (\$10,086.00). Such stipulated penalties shall not accrue during the period of any Dispute Resolution under this CA/FO.
36. Respondent shall pay stipulated penalties within FIFTEEN (15) DAYS after receipt of written demand by EPA for such penalties. The method of payment shall be in accordance with Paragraph 17, above.

LANGUAGE TO BE INCLUDED IN PUBLIC STATEMENTS

37. Any public statement, oral or written, in print, film or other media, made by Respondent, making reference to this SEP shall include the following language: "This project was undertaken in connection with the settlement of an enforcement action taken by the U.S. Environmental Protection Agency for violations of requirements of the Residential Lead-Based Paint Hazard Reduction Act of 1992 ("RLBPHRA"), 42 U.S.C. §§ 4851 *et seq.*, and regulations promulgated thereunder, as set forth in 40 C.F.R. Part 745, Subpart F."

PROVISIONS IN EVENT OF DELAY OR ANTICIPATED DELAY

38. If any event occurs which causes or may cause delays in the completion of the SEP as required under this CA/FO, Respondent shall notify Complainant in writing not more than TWENTY (20) DAYS after the delay or when Respondent knew or should have known of the anticipated delay, whichever is earlier. The notice shall describe in detail the anticipated length of the delay, the precise cause or causes of the delay, the measures taken and to be taken by Respondent to minimize the delay, and the timetable by which those measures shall be implemented. The Respondent shall adopt all reasonable measures to avoid or minimize any such delay. Failure by Respondent to comply with the notice requirements of this Paragraph shall render this Paragraph void and of no effect as to the particular incident involved and constitute a waiver of the Respondent's right to seek an extension of the time for performance of its obligations under this CA/FO.
39. If the Parties agree that the delay or anticipated delay in compliance with this CA/FO has been or will be caused by circumstances entirely beyond the control of Respondent which could not be overcome by due diligence, the time for performance hereunder may be extended for a period no longer than the delay resulting from such circumstances. In such event the Parties shall stipulate to such extension of time.
40. In the event that EPA does not agree that the delay in achieving compliance with this CA/FO has been or will be caused by circumstances entirely beyond the control of Respondent which could not be overcome by due diligence, EPA will notify Respondent in writing of its decision and any delays in the completion of the SEP shall not be excused.
41. The burden of proving that any delay is caused by circumstances entirely beyond the control of Respondent which could not be overcome by due diligence shall rest with the Respondent. Increased costs or expenses associated with the implementation of actions called for by this CA/FO shall not, in any event, be a basis for changes in this CA/FO or extensions of time under Paragraph 39 of this CA/FO. Delay in achievement of one interim step shall not necessarily justify or excuse delay in achievement of subsequent steps.

SATISFACTION OF SETTLEMENT CONDITIONS

42. A determination of compliance with the conditions set forth herein will be based upon, inter alia, copies of records and reports submitted by Respondent to EPA under this CA/FO and any inspections of the work performed under the SEP that EPA reasonably determines are necessary to evaluate compliance. Respondent is aware that the submission of false or misleading information to the United States government may subject it to separate civil and/or criminal liability. Complainant reserves the right to seek and obtain appropriate relief if Complainant obtains evidence that the information provided and/or representations made by Respondent to Complainant regarding the matters at issue in the Factual Allegations and Conclusions of Law are false or, in any material respect, inaccurate.
43. If EPA determines that Respondent has complied fully with the conditions set forth herein, EPA, through the Regional Administrator of U.S. EPA - Region III, or his designee, shall promptly issue a Letter of Remittance Upon Satisfaction of Settlement Conditions, which shall state that Respondent has performed fully the conditions set forth in this CA/FO and paid all penalty amounts due pursuant to the terms of this CA/FO.

VI. EFFECT OF SETTLEMENT

44. The settlement set forth herein shall constitute full and final satisfaction of all civil claims for penalties which Complainant may have under TSCA for the specific violations alleged in the Complaint and herein. Compliance with this CA/FO shall not be a defense to any action commenced at any time for any other violation of the federal laws and regulations administered by EPA.

VII. OTHER APPLICABLE LAWS

45. Nothing in this CA/FO shall relieve Respondent of its obligation to comply with all applicable federal, state, and local laws and regulations.

VIII. CERTIFICATION OF COMPLIANCE

46. Respondent certifies to Complainant, upon investigation, to the best of its knowledge and belief, that Respondent, in its capacity as an “agent” for target housing sellers, presently is complying with the provisions of TSCA, and the regulations promulgated thereunder at 40 C.F.R. Part 745, Subpart F, that are referenced in this Consent Agreement.

IX. RESERVATION OF RIGHTS

47. This Consent Agreement and the accompanying Final Order resolve only EPA’s claims for civil monetary penalties for the specific violations alleged in the Complaint. 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. In addition, 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. Further, EPA reserves any rights and remedies available to it under TSCA, the RLBPHRA, the regulations promulgated thereunder at 40 C.F.R. Part 745, Subpart F, and any other federal laws or regulations for which EPA has jurisdiction, to enforce the provisions of this CA/FO, following its filing with the EPA Regional Hearing Clerk.

48. Nothing in this CA/FO shall constitute or be construed as a release of Respondent from any claim, cause of action, or demand in law or equity by any person, firm, partnership, or corporation not bound by this CA/FO for any liability relating in any way to the presence of lead-based paint and/or lead-based paint hazards at or in any target housing which is the subject of this CA/FO.

X. PARTIES BOUND

49. This Consent Agreement and the accompanying Final Order shall apply to and be binding upon the EPA, the Respondent and its officers, directors, employees, successors, agents and assigns.

XI. EFFECTIVE DATE

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

XII. ENTIRE AGREEMENT

51. This Consent Agreement and the accompanying Final Order constitute the entire agreement and understanding of the parties regarding settlement of all claims 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 CA/FO.

XIII. EXECUTION

52. The person signing this Consent Agreement on behalf of the Respondent acknowledges and certifies by his/her signature that he/she is fully authorized to enter into this Consent

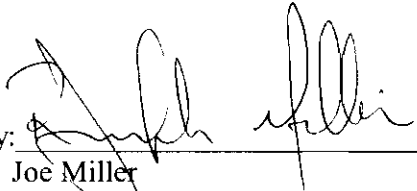
In the Matter of:
Old Colony Company

Consent Agreement
Docket No. TSCA-03-2008-0386

Agreement and to legally bind Old Colony Company to the terms and conditions of this Consent Agreement and the accompanying Final Order.


For Respondent, Old Colony Company:

Date: 4/2/09

By: 
Joe Miller
President


For Complainant:

Date: 4/6/09

By: 
Brianna Tindall
Assistant Regional Counsel

Accordingly, I hereby recommend that the Regional Administrator, or his designee, the Regional Judicial Officer, issue the attached Final Order.

Date: 4/9/09

By: 
Abraham Ferdas, Director
Land and Chemicals Division

**BEFORE THE UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION III**

In the Matter of:

**OLD COLONY COMPANY
1205 Virginia Street, E
Charleston, WV 25301**

Respondent.

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**U.S. EPA Docket No.
TSCA-03-2008-0386**

**Proceeding under Sections 409
and 16(a) of the Toxic Substances
Control Act, 15 U.S.C. §§ 2689
and 2615(a)**

FINAL ORDER

Complainant, the Director of the Land and Chemicals Division, U.S. Environmental Protection Agency - Region III, and Respondent, Old Colony Company, have executed a document entitled "Consent Agreement", which I hereby ratify as a Consent Agreement in accordance with *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits* ("*Consolidated Rules of Practice*"), published at 40 C.F.R. Part 22. The terms of the foregoing Consent Agreement are accepted by the undersigned and incorporated into this Final Order as if set forth fully herein.

NOW, THEREFORE, PURSUANT TO Section 1018 of the Residential Lead-Based Paint Hazard Reduction Act of 1992 ("Lead Paint Disclosure Act"), 42 U.S.C. §§ 4851 *et seq.* and 40 C.F.R. Part 745, Subpart F, which authorizes the assessment of a civil penalty under Section 16 of TSCA, 15 U.S.C. § 2615, for violations of the Lead Paint Disclosure Act, and the *Consolidated Rules of Practice*, and having determined, based on the representations of the parties to the attached Consent Agreement, that the civil penalty agreed therein was based upon the factors set forth in Section 16(a)(2)(B) of TSCA, 15 U.S.C. § 2615(a)(2)(B), **IT IS HEREBY ORDERED** that Respondent pay a civil penalty of Twenty Nine Thousand One Hundred and

Nine Dollars (\$ 29,109.00), and comply with the terms and conditions of the attached Consent Agreement.

The effective date of this Final Order and the accompanying Consent Agreement is the date on which the Final Order, signed by the Regional Administrator of U.S. EPA Region III or the Regional Judicial Officer, is filed with the Regional Hearing Clerk of U.S. EPA - Region III.

Date: 4/9/09

By: Renée Sarajian

Renée Sarajian
Regional Judicial Officer
U.S. EPA, Region III

ATTACHMENT A

Supplemental Environmental Project Statement of Work ("SEP SOW")

As outlined in this attachment, Old Colony Company ("Respondent" or "Old Colony") has agreed to perform the following Supplemental Environmental Project ("SEP"), which will constitute a portion of the settlement of the administrative enforcement action brought by EPA against Respondent to address alleged violations of the Toxic Substances Control Act ("TSCA") and the Real Estate Notification and Disclosure Rule for Lead-Based Paint (the "Disclosure Rule"). The SEP, which is a targeted educational outreach program, falls under the category of Environmental Compliance Promotion in the EPA Supplemental Environmental Projects Policy ("SEP Policy") effective May 1, 1998, Section D.6. (63 Fed. Reg. 24796 [May 5, 1998]). The SEP was approved by Rosemarie Kelley, the Director of the Waste and Chemical Enforcement Division at EPA Headquarters, on January 23, 2009, as required by the SEP Policy.

Section 1018(b)(5) of the Residential Lead-Based Paint Hazard Reduction Act of 1992 ("the Act") makes it a prohibited act, under Section 409 of TSCA, for any person to fail or refuse to comply with the requirements of the Disclosure Rule. Section 1018(b)(5) of the Act specifically states:

It shall be a prohibited act under Section 409 of the Toxic Substances Control Act for any person to fail or refuse to comply with a provision of this section or with any rule or order issued under this section. For purposes of enforcing this section under the Toxic Substances Control Act, the penalty for each violation applicable under Section 16 of that Act shall not be more than \$10,000.

Region III is aware of widespread noncompliance with the Disclosure Rule in the real estate sector, particularly in West Virginia. Based on Region III's experience, non-compliance with the Disclosure Rule requirements is primarily due to a lack of awareness on the part of the real estate sector. This SEP will involve a compliance promotion effort for the real estate sector in West Virginia at a state-wide conference and at regional meetings throughout the state.

The Complaint and Consent Agreement and Final Order ("CA/FO") filed in this matter provide more information on the alleged violations and the penalty.

I. Supplemental Environmental Project

The SEP involves promoting awareness of the Disclosure Rule requirements within the real estate sector. Respondent shall conduct seminars at trade events within the real estate sector in West Virginia, pursuant to an EPA-approved presentation plan and EPA-approved presentation materials.

Step 1: Presentation Preparation

The first step in the SEP SOW is presentation preparation. Respondent will prepare presentation materials, which will be aimed at promoting awareness of the Disclosure Rule among real estate agents in West Virginia. Respondent will then send any and all outlines, plans, handouts, Powerpoint presentations, and other presentation materials to EPA for approval before they are used publicly. Kyle Chelius at EPA, 215-814-3178, will serve as the EPA contact for this approval process.

Step 2: Presentations

Respondent will conduct compliance education outreach presentations to real estate agents located in nine West Virginia cities and the annual state-wide conference of real estate agents (West Virginia Association of REALTORS Convention). Invitations will be sent to at least 550 real estate agents. Presentations will take place in the following cities, and at the West Virginia Association of REALTORS Convention:

- | | | |
|----|-----------------|---|
| 1. | Charleston, WV | (5 miles round-trip from Respondent's office) |
| 2. | Putnam, WV | (48 miles round-trip from Respondent's office) |
| 3. | Huntington, WV | (90 miles round-trip from Respondent's office) |
| 4. | Parkersburg, WV | (162 miles round-trip from Respondent's office) |
| 5. | Beckley, WV | (114 miles round-trip from Respondent's office) |
| 6. | Princeton, WV | (190 miles round-trip from Respondent's office) |
| 7. | Lewisburg, WV | (225 miles round-trip from Respondent's office) |
| 8. | Morgantown, WV | (312 miles round-trip from Respondent's office) |
| 9. | Martinsburg, WV | (610 miles round-trip from Respondent's office) |

The education program will consist of a three hour program that will review the regulatory challenges of compliance with the TSCA Lead-Based Paint Program by the realty industry with an emphasis upon specific instances of non-compliance that were identified by EPA in its enforcement action against Old Colony Realty. The program will review the use of appropriate training modules emphasizing use of correct forms and effective compliance checklists and audit tools.

Respondent will keep records of the attendance at such events. Respondent will record the number of attendees, the name and business affiliation of each attendee, and the address and phone number of each attendee. These attendance records will be submitted with the SEP Completion Report, as described in Paragraph 23 of the CA/FO.

Step 3: Submit SEP Completion Report

As stated in Paragraph 20 of the CA/FO, Respondent shall complete the SEP within twelve months of the effective date of the CA/FO. Within thirteen months of the effective date of the CA/FO, Respondent shall submit the SEP Completion Report to EPA, as set forth in Paragraph 23 of the CA/FO. The CA/FO sets forth further provisions to address anticipated delay, stipulated penalties, and dispute resolution.

II. ESTIMATED COSTS

The estimated cost of the SEP includes the following expense items:

1. Postage for 550 invitations @ .44 = \$242.00
2. Postage for confirmation of registration (no fee for registration) of 385 attendees @ .44 = \$169.40
3. Copying, catering and room rental expenses per estimated total 385 attendees @ 17.25 = \$6,641.25
4. Gas mileage for travel of approximately 1756 miles @ .50 per mile = \$878.00
5. Subsequent mailing of compilation of most common Questions and Answers presented at the end of all 10 programs mailed to all 550 invitees @ .44 = \$242.00
6. Develop email list serve for future communications with attendees = no out of pocket costs.
7. Fee for SEP Instructor/Facilitator = \$12,000.00

Total Value = \$20,172.00


The CA/FO describes the methodology for calculating stipulated penalties if Respondent spends less than the estimated costs in the SEP SOW.

CERTIFICATE OF SERVICE

I certify that on the date noted below, I sent by Overnight Delivery Service, a copy of the Consent Agreement and Final Order, **In the Matter of: Old Colony Company, U.S. EPA Docket Number TSCA-03-2008-0386**, to the persons and addresses listed below. The original Consent Agreement and Final Order were hand-delivered to the Regional Hearing Clerk, U.S. EPA Region III.

Ms. Kathy Beckett, Esquire
Jackson Kelly, PLLC
500 Lee Street East, Ste. 1000
Charleston, WV 25305

Dated: 4/09/09



Brianna Tindall
Assistant Regional Counsel
Office of Regional Counsel
EPA, Region III
1650 Arch Street
Philadelphia, PA 19103-2029