

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2**

In the Matter of:)

Goldman Titanium, Inc.)
105 Dorothy Street)
Buffalo, New York)

Respondent.)

**CONSENT AGREEMENT AND
FINAL ORDER**

Docket Number: EPCRA-02-2015-400

REGIONAL HEARING
CLERK

2015 OCT -2 AM 7:00

U.S. Environmental
Protection Agency-Reg 2

PRELIMINARY STATEMENT

1. This Consent Agreement and Final Order ("CA/FO") is issued pursuant to Section 325 of the Emergency Planning and Community Right to Know Act ("EPCRA"), 42 U.S.C. § 11045. The Complainant in this action is the Director of the Emergency and Remedial Response Division of the United States Environmental Protection Agency, Region 2 ("EPA"), who has been delegated the authority to institute this action.

2. Pursuant to Section 22.13 of the Consolidated Rules of Practice, of Part 40 of the Code of Federal Regulations ("CFR") § 22.13(b), where parties agree to settlement of one or more causes of action before the filing of a complaint, a proceeding may simultaneously be commenced and concluded by the issuance of a CA/FO pursuant to 40 CFR §§ 22.18(b)(2) and (3).

3. EPA and Respondent Goldman Titanium, Inc. ("Respondent") agree that settling this matter by entering into this CA/FO pursuant to 40 CFR § 22.13(b) and 40 CFR §§ 22.18(b)(2) and (3) is an appropriate means of resolving this case without litigation.

STATUTORY BACKGROUND

4. Section 312(a) of EPCRA, 42 U.S.C. § 11022(a), and the regulations found at 40 CFR Part 370, provide that the owner or operator of a facility which is required to prepare or have available a Material Safety Data Sheet ("MSDS") for a hazardous chemical under the Occupational Safety and Health Act of 1970, 29 U.S.C. § 651, *et seq.* ("OSHA") shall submit a completed emergency and hazardous chemical inventory form (Tier I or Tier II form) to the Local Emergency Planning Committee ("LEPC"), the State Emergency Response Commission ("SERC"), and the local fire department with jurisdiction over the facility, by March 1, 1988 (and annually thereafter). This inventory form must contain the information required by Section 312 of EPCRA and 40 CFR Part 370 for all hazardous chemicals which have been present at the facility at any one time during the preceding year in amounts equal to or greater than the threshold levels set forth in 40 CFR § 370.10.

5. Section 325 of EPCRA, 42 U.S.C. § 11045, provides for the assessment of penalties for violations of Section 312 of EPCRA.

FINDINGS OF FACT

6. Respondent owns and/or operates a facility, located at 105 Dorothy Street, Buffalo, New York (the "Facility").

7. On or about September 19, 2011, EPA inspected the Facility. Respondent uses and has used hydrofluoric acid and nitric acid as part of operations at the Facility.

EPA'S CONCLUSIONS OF LAW

8. Respondent is, and at all times referred to herein was, a "person," within the meaning of Section 329(7) of EPCRA, 42 U.S.C. § 11049(7).

9. Respondent owned and/or operated the Facility at the time of EPA's September 19, 2011 inspection and during the relevant periods described herein.

10. The Facility is a "facility," as defined in Section 329(4) of EPCRA, 42 U.S.C. § 11049(4).

11. Hydrofluoric acid (CAS# 7664-39-3) is an "extremely hazardous substance" as defined under Section 329(3) of EPCRA, 42 U.S.C. § 11049(3), with a minimum threshold level for reporting of 100 pounds pursuant to 40 C.F.R. § 370.10. Nitric acid (CAS# 7697-37-2) is an "extremely hazardous substance" as defined under Section 329(3) of EPCRA, 42 U.S.C. § 11049(3), with a minimum threshold level for reporting of 500 pounds pursuant to 40 C.F.R. § 370.10.

12. Hydrofluoric acid and nitric acid were present at the Facility in quantities above the threshold levels set forth in 40 C.F.R. § 370.10 in the reporting year 2010 and Respondent was required under OSHA to prepare or have available an MSDS for hydrofluoric acid and nitric acid for the Facility. Therefore, Respondent was required, pursuant to Section 312 of EPCRA, 42 U.S.C. § 11022, to submit a completed emergency and hazardous chemical inventory form (Tier I or Tier II form) for the hydrofluoric acid and nitric acid present at the Facility by March 1, 2011 to the LEPC, the SERC, and the fire department with jurisdiction over the Facility.

13. As of the date of the EPA inspection, Respondent had not timely submitted completed emergency and hazardous chemical inventory forms (Tier I or Tier II form) for hydrofluoric acid and nitric acid for the Facility for the reporting year 2010 to the LEPC, the SERC and/or the local fire department with jurisdiction over Respondent's Facility. Thus, Respondent violated the reporting requirements of Section 312 of EPCRA, 42 U.S.C. § 11022, and is therefore subject to the assessment of penalties under Section 325 of EPCRA, 42 U.S.C. § 11045.

CONSENT AGREEMENT

14. Based upon the foregoing, and pursuant to Section 325 of EPCRA and the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits” (40 C.F.R. Part 22), it is hereby agreed by and between Complainant and Respondent, as follows.

15. For the purpose of this proceeding and in the interest of an expeditious resolution of this matter, pursuant to 40 C.F.R. § 22.18(b)(2), Respondent: a) admits the EPA has jurisdiction to commence a civil administrative proceeding for the violations alleged above; b) admits the Findings of Fact set forth above; c) consents to the assessment of the civil penalty as set forth below; d) consents to the issuance of the Final Order accompanying this Consent Agreement; and e) waives its right to contest the Findings of Fact or appeal the attached Final Order in any forum.

16. Respondent neither admits nor denies the EPA Conclusions of Law set forth above.

17. Respondent hereby certifies that it is now in compliance with all applicable requirements of Section 312 of EPCRA, 42 U.S.C. § 11022 at the Facility.

18. Respondent agrees to pay a civil penalty in the total amount of \$15,934.00 as described below. Such payment shall be made by cashier’s or certified check or by Electronic Fund Transfer (“EFT”). Payment of the penalty must be received by EPA on or before thirty calendar days after the date of signature of the Final Order at the end of this document (hereinafter referred to as the “due date”).

If the payment is made by check, then the check shall be made payable to the “Treasurer, United States of America” and shall be mailed to:

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

The check shall be identified with a notation listing the following: “In the Matter of Goldman Titanium, Inc.” and shall bear thereon “Docket Number EPCRA-02-2015-4001.”

If Respondent chooses to make the payment by EFT, then Respondent shall provide the following information to its remitter bank:

- a. Amount of Payment (\$15,934.00)
- b. SWIFT address: FRNYUS33, 33 Liberty Street, New York, NY 10045
- c. Account Code for Federal Reserve Bank of New York receiving payment:
68010727

- d. Federal Reserve Bank of New York ABA routing number: 021030004
- e. Field Tag 4200 of the Fedwire message should read:
“D 68010727 Environmental Protection Agency”
- f. Name of Respondent: Goldman Titanium, Inc.
- g. Case Number: EPCRA-02-2015-4001

Whether the payment is made by check or by EFT, Respondent shall promptly furnish reasonable proof that such payment has been made to:

Henry Guzman
Assistant Regional Counsel
U.S. Environmental Protection Agency
290 Broadway, 17th Floor
New York, New York 10007

and

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th Floor
New York, NY 10007.

Payment must be received pursuant to the provisions above.

- a) Failure to pay the penalty in full according to the above provisions may result in the referral of this matter to the U.S. Department of Justice or the U.S. Department of the Treasury for appropriate enforcement, including collection of the amount set forth in this Paragraph plus allowable interest and such other penalties as provided for in this Consent Agreement.
- b) Further, if payment is not received on or before the due date, Respondent agrees to the assessment of interest, at the annual rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717, on the overdue amount from the due date through the date of payment. In addition, Respondent agrees to pay a late payment handling charge of \$15 for each thirty day period (or any portion thereof) following the due date in which the balance remains unpaid.
- c) Respondent agrees that a 6% per annum penalty will also be applied on any principal amount not paid within ninety days of the due date.

19. The penalties specified in Paragraph 18, above, shall represent civil penalties assessed by EPA and shall not be deductible for purposes of State or Federal taxes.

20. This Consent Agreement is being voluntarily and knowingly entered into by the parties in full and final settlement of the civil liability that might have attached under Section 312 of EPCRA, 42 U.S.C. § 11022, as a result of the alleged violations set forth in the "EPA Conclusions of Law" section, above, and Respondent's payment of the civil penalty in accordance with the terms and conditions of this section shall resolve any such liability.

21. Respondent has read the Consent Agreement, understands its terms, and voluntarily consents to its issuance and its terms and conditions, including payment of the full amount of the civil penalty in accordance with the terms set forth above. Respondent also consents to the issuance of the accompanying Final Order.

22. Respondent waives its right to request and/or obtain a hearing on this Consent Agreement, or the accompanying Final Order, including any right to contest any of the Findings of Fact and EPA Conclusions of Law set forth in said Consent Agreement and any right to contest any of the terms or conditions set forth in said Consent Agreement.

23. Respondent waives any right it may have pursuant to 40 C.F.R. § 22.8 to be present during discussions between EPA staff and the Regional Judicial Officer of EPA Region 2, and further waives the right to be served with and to reply to any memorandum or communication addressed by EPA staff to the Regional Judicial Officer, where the purpose of such discussion, memorandum, or communication is to discuss a proposed settlement of this matter or to recommend that such official accept this Consent Agreement and issue the attached Final Order.

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

25. This CA/FO shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, State, or local law, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, State, or local permit. Nothing in this CA/FO is intended to nor shall be construed to operate in any way to resolve any criminal liability of Respondent. Except for the matters resolved hereby, compliance with this CA/FO shall not be a defense to any actions subsequently commenced pursuant to federal laws and regulations administered by EPA, and it is the responsibility of Respondent to comply with such laws and regulations.

26. Each party hereto shall bear its own costs and fees in this matter.

27. Full and complete satisfaction of the requirements of this CA/FO shall resolve Respondent's liability for federal civil penalties for the alleged violations and facts alleged herein.

28. The person signing below on behalf of Respondent hereby certifies that he or she is fully authorized by Respondent to execute this Consent Agreement on behalf of Respondent and to legally bind Respondent to this Consent Agreement in accordance with all of the terms and conditions contained herein.

29. The Director of the Emergency and Remedial Response Division of EPA Region 2 has been delegated the authority to sign the Consent Agreement in this action, and the Regional Judicial Officer of EPA Region 2 has been delegated the authority to sign the Final Order in this action.

30. Respondent consents to service upon Respondent of a copy of this CA/FO by any EPA employee, in lieu of service made by the EPA Region 2 Regional Hearing Clerk.

For Respondent
Goldman Titanium, Inc.:



Signature

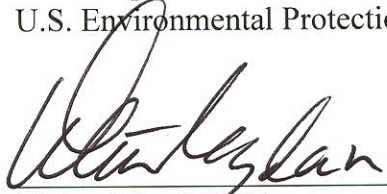
Date: 9/30/15

GARY GREENFIELD
Name (Printed or Typed)

PRESIDENT
Title (Printed or Typed)

Consent Agreement In the Matter of Goldman Titanium, Inc.
Docket Number: EPCRA-02-2015-4001

For Complainant
U.S. Environmental Protection Agency:



Walter Mugdan, Director
Emergency and Remedial Response
Division, Region 2

Date: Sept. 30, 2015

In the Matter of Goldman Titanium, Inc.
Docket Number: EPCRA-02-2015-4001

FINAL ORDER

The Consent Agreement In the Matter of Goldman Titanium, Docket Number: EPCRA-02-2015-4001, signed on behalf of Respondent Goldman Titanium, Inc. and the Environmental Protection Agency, is hereby approved, incorporated herein, and issued by U.S. EPA as a Final Order. The effective date of this Final Order shall be the date of filing with the Regional Hearing Clerk, U.S. EPA, Region 2, New York, New York.

Sept 30, 2015
Date

Helen Ferrara
Helen Ferrara
Regional Judicial Officer
U.S. EPA, Region 2



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 2
290 BROADWAY
NEW YORK, NY 10007-1866

SEP 30 2015

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Gary Greenfield, President
Goldman Titanium, Inc.
105 Dorothy Street,
Buffalo, New York 14226

Re: Notice of Noncompliance – Violations of Section 112(r)(1) of the Clean Air Act, 42 U.S.C. § 7412 (r)(1)

Dear Mr. Greenfield:

The United States Environmental Protection Agency (“EPA”) is issuing this Notice of Noncompliance to Goldman Titanium, Inc. (“Goldman Titanium”) for violations of the general duty clause provisions of Section 112(r)(1) of the Clean Air Act (“CAA”), 42 U.S.C. § 7412(r)(1), concerning Goldman Titanium’s facility, located at 105 Dorothy Street, Buffalo, New York (“the Facility”).

Pursuant to Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1), the owners and operators of stationary sources producing, processing, handling, or storing substances listed pursuant to Section 112(r)(3) of the CAA, 42 U.S.C. § 7412(r)(3), or any other extremely hazardous substance, have a general duty, in the same manner and to the same extent as 29 U.S.C. § 654, to identify hazards which may result from accidental releases of such substances using appropriate hazard assessment techniques, to design and maintain a safe facility taking such steps as are necessary to prevent releases, and to minimize the consequences of accidental releases which do occur.

The City of Buffalo Bureau of Fire Prevention has a record of 14 reports of fire at the Goldman Titanium facility over the 13 year period between 1999 and 2011. On April 4, 2011, there was a fire in the ceiling of the Goldman Titanium building. The Investigative Report written by the Buffalo Fire Department determined that the cause of the fire was the ignition of airborne titanium dust in the ceiling fan.

On July 18, 2011, there was a significant fire at the Goldman Titanium facility. The fire involved titanium turnings or scraps that were stored in bulk form in an outside yard area at the South East end of the property. After the July 18, 2011 incident, EPA conducted an inspection of the Facility on September 19, 2011 to assess compliance with Section 112(r) of the CAA (the “Inspection”).

Subsequent to EPA's inspection and investigation, there was another fire in the turnings area at the Goldman Titanium facility. That fire involved approximately two barrels of titanium material believed being delivered from a supplier. Goldman Titanium's internal emergency response policy at the time called for the employees on-site to respond to the fire without involving the Buffalo Fire Department. The fire department was called by a local resident upon seeing smoke. Goldman Titanium's response to the fire was complicated by problems with two fire extinguishers which did not work correctly.

Goldman Titanium is, and at all times referred to herein was, a "person" as defined by Section 302(e) of the CAA, 42 U.S.C. § 7602(e). The Facility is a "stationary source" pursuant to Section 112(r)(2)(C) of the CAA. At its Facility, Goldman Titanium stores, processes and handles titanium turnings and generates and handles titanium dust or powder, a substance which is an extremely hazardous substance for the purposes of Section 112(r)(1) of the CAA.

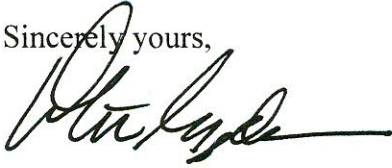
Pursuant to Section 112(r)(1) of the CAA, Goldman Titanium has a general duty, in the same manner and to the same extent as 29 U.S.C. § 654, to (a) identify hazards which may result from accidental releases of a regulated substance or any other extremely hazardous substance, using appropriate hazard assessment techniques, (b) design and maintain a safe facility taking such steps as are necessary to prevent releases, and (c) minimize the consequences of accidental releases which do occur.

Notice is hereby given that, based on information available to EPA, including information gathered during the inspection performed by EPA at the Facility, EPA has determined that Goldman Titanium violated the general duty clause provisions of Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1), as described above. Regarding the fires described above, Goldman Titanium failed to identify hazards, maintain a safe facility, and/or minimize the consequences of the releases and fires which occurred.

EPA's June 2012 Combined Enforcement Policy for Clean Air Act Sections 112(r)(1), Section 112(r)(7) and 40 CFR Part 68, a copy of which is enclosed, sets forth possible enforcement options, including Notices of Noncompliance, and civil penalties. You should note that if your company continues to be subject to the requirements of Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1), future violations of these requirements may result in the imposition of penalties against your company, which may include upward adjustments in consideration of prior violations.

If you have any questions regarding this matter or future compliance, please contact Ellen Banner of my office at (732) 321-4348.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Walter Mugdan", with a long horizontal flourish extending to the right.

Walter Mugdan, Director
Emergency and Remedial Response Division

Enclosure

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2**

_____)	
In the Matter of:)	<u>CONSENT AGREEMENT AND</u>
)	<u>FINAL ORDER</u>
Goldman Titanium, Inc.)	
105 Dorothy Street)	
Buffalo, New York)	Docket Number: EPCRA-02-2015-4001
)	
Respondent.)	
_____)	

Certificate of Service

This is to certify that I have this day caused (or am causing) to be sent the foregoing fully executed Consent Agreement and Final Order, bearing Docket Number EPCRA-02-2015-4001, in the following manner to the respective addressees below:

Original and One Copy
By Hand:

Office of Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 2
290 Broadway
New York, New York 10007

Copy by email and
Certified Mail:

Morgan G. Graham
Phillips Lytle, LLP
One Canalside
125 Main Street
Buffalo, NY 14203-2887
Phone 716 847 7070
Fax 716 852 6100
MGraham@phillipslytle.com

Dated: 9/30/15

By: Sandra Grant

Name: Sandra Grant
Title: Branch Secretary, New York/Caribbean Superfund
Office of Regional Counsel
U.S. E.P.A., Region 2, 290 Broadway, New York, NY 10007-1866