

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 2

May 15, 2024 @ 9:52 am  
USEPA – Region II  
Regional Hearing Clerk

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**In the Matter of** :  
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**VDM Metals USA, LLC** :  
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:  
**Respondent.** :  
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:  
Proceeding under Section 16(a) of :  
the Toxic Substances Control Act. :  
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**CONSENT AGREEMENT**  
**AND**  
**FINAL ORDER**

**Docket Number**  
**TSCA-02-2024-9106**

**PRELIMINARY STATEMENT**

This administrative proceeding for the assessment of a civil penalty was instituted pursuant to Section 16(a) of the Toxic Substances Control Act ("TSCA"), 15 U.S.C. § 2615(a). 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 (July 1, 2000) (hereinafter "Consolidated Rules"), provide in 40 C.F.R. § 22.13(b) that when the parties agree to settle one or more causes of action before the filing of an Administrative Complaint, a proceeding may be simultaneously commenced and concluded by the issuance of a consent agreement and order pursuant to 40 C.F.R. § 22.18(b)(2) and (3).

The Director of the Enforcement and Compliance Assurance Division, United States Environmental Protection Agency Region 2 ("the EPA" or "Complainant"), alleges that VDM Metals USA, LLC ("Respondent") violated Section 6(e) of TSCA, 15 U.S.C. § 2605(e), and the regulations promulgated pursuant to that Section, set forth at 40 C.F.R. Part 761, relating to polychlorinated biphenyls ("PCBs") and Section 15(1) of TSCA, 15 U.S.C. § 2614(1).

The EPA and Respondent agree that settling this matter by entering into this Consent Agreement and Final Order ("CAFO") pursuant to 40 C.F.R. § 22.13(b) and 40 C.F.R. § 22.18(b)(2) and (3) is an appropriate means of resolving this case without further litigation. This CAFO is

being issued pursuant to said provisions of 40 C.F.R. Part 22. No formal or adjudicated findings of fact or conclusions of law have been made. The following constitute Complainant's findings of fact and conclusions of law.

### **FINDINGS OF FACT**

1. Respondent is VDM Metals USA, LLC.
2. Respondent owns, operates, and/or controls a facility located in and around 306 Columbia Turnpike, Florham Park, New Jersey 07932 which is the subject of the CAFO (hereinafter "Respondent's VDM facility").
3. On October 12, 2023, duly designated representatives of the EPA conducted an inspection of and at Respondent's VDM facility (hereinafter, "the October inspection").
4. At the time of the October inspection, Respondent had one PCB Transformer on site containing over 500 ppm PCBs.
5. At the time of the October inspection, the EPA determined that neither the fence surrounding nor the means of access to the PCB Transformer was marked with a PCB Mark M<sub>L</sub>, as described and illustrated at 40 CFR 761.45.
6. At the time of the October inspection, the EPA determined that Respondent had failed to develop and maintain Annual Documents on the disposition of PCBs and PCB Items in accordance with the specifications and requirements of 40 C.F.R. § 761.180(a).
7. On February 15, 2024, the parties met for an informal video conference which included a settlement discussion. Subsequent discussions were held via electronic mail and telephone.

### **CONCLUSIONS OF LAW**

8. Respondent is subject to the regulations and requirements pertaining to PCBs and PCB Items promulgated pursuant to Section 6(e) of TSCA, 15 U.S.C. § 2605(e), and set forth at 40 C.F.R. Part 761.
9. Respondent is a "person" within the meaning of 40 C.F.R. § 761.3.

10. Failure to label the access area to a PCB Transformer with the PCB Mark  $M_L$  is a violation of 40 CFR 761.40(j)(1), which is a violation of Section 6(e) and Section 15(1)(C) of TSCA, 15 U.S.C. §§ 2605(e) and 2614(1)(C).

11. Failure to develop and maintain Annual Documents on the disposition of Respondent-owned PCBs and PCB Items is a violation of 40 C.F.R. § 761.180(a), which is a violation of Section 6(e) and Section 15(1)(C) of TSCA, 15 U.S.C. §§ 2605(e) and 2614(1)(C).

12. Respondent is liable to the United States pursuant to Section 16(a)(1) of TSCA, 15 U.S.C. § 2615(a)(1) for the violations described in paragraphs 3 and 4, above.

### **TERMS OF CONSENT AGREEMENT**

Based on the foregoing, and pursuant to Section 16(a) of TSCA, 15 U.S.C. § 2615(a) and in accordance with the Consolidated Rules of Practice at 40 C.F.R. Part 22, it is hereby agreed by and between the parties hereto, and accepted by Respondent, that Respondent voluntarily and knowingly agrees to, and shall, comply with the following terms.

13. Respondent shall hereinafter comply with all applicable provisions of TSCA and the regulations promulgated pursuant to it.

14. Respondent hereby certifies that, as of the date of its signature to this CAFO, to the best of its knowledge and belief, it is now in full compliance with the provisions and statutory requirements of Section 6(e) of TSCA, 15 U.S.C. § 2605(e) and the regulations promulgated pursuant to that Section, set forth at 40 C.F.R. Part 761, relating to polychlorinated biphenyls ("PCBs").

15. For the purposes of this Consent Agreement, Respondent knowingly and voluntarily (a) admits that the EPA has jurisdiction pursuant to Section 16(a) of TSCA, 15 U.S.C. § 2615(a), to commence a civil administrative proceeding for the violations alleged in the "Conclusions of Law" section above; (b) neither admits nor denies the specific factual allegations contained in the "Findings of Fact" section, above; and (c) neither admits nor denies the assertions set forth in the "Conclusions of Law" section, above.

**Penalty**

16. Respondent shall pay a civil penalty to the EPA in the total amount of **THIRTY THOUSAND TWENTY DOLLARS (\$30,020.00)**. Payment shall be due thirty (30) calendar days from the date on which the Regional Judicial Officer of the EPA signs the Final Order located at the end of this CAFO (the “due date”).

17. Payment shall be made by cashier’s check, certified check, electronically via Fedwire or online in accordance with the instructions set forth in this paragraph. If Respondent makes payment by cashier’s check or certified check, then each such check shall be *received* at the below-listed address on or before the due date. If Respondent makes payment electronically, then each such payment shall be *effected* on or before the date specified.

a. If Respondent chooses to make payment by cashier’s check or by certified check, each such check shall be made payable to the “**Treasurer, United States of America**” and shall be identified with a notation thereon listing the following: ***In the Matter of VDM Metals USA, LLC, TSCA-02-2024-9106***. If payment is made by either form of check, such payment shall be mailed to one of the following addresses.

- If sent by United States Postal Service (USPS) standard delivery, then send to:

U.S. Environmental Protection Agency  
P.O. Box 979078  
St. Louis, MO 63197-9000.

- If sent by services using signed receipt confirmation (FedEx, DHL, UPS, USPS certified, USPS registered, etc.), then send to:

U.S. Environmental Protection Agency  
Government Lockbox 979078  
3180 Rider Trail S.  
Earth City, MO 63045.

b. Alternatively, If Respondent chooses to make payment by Electronic Funds Transfer (“ETF”) via Fedwire, Respondent shall then provide the following information to its remitter bank when each such payment is made:

- i. Amount of Payment;
- ii. SWIFT address: **FRNYUS33, 33 Liberty Street, New York, New York 10045;**

iii. Account Code for Federal Reserve Bank of New York receiving payment:

**68010727;**

iv. Federal Reserve Bank of New York ABA routing number: **021030004;**

v. Field Tag 4200 of the Fedwire message should read: **D 68010727**

**Environmental Protection Agency;**

vi. Name of Respondent: **VDM Metals USA, LLC;** and

vii. Docket Number: **TSCA-02-2024-9106.**

c. If Respondent chooses to make online payment, Respondent shall go to [www.pay.gov](http://www.pay.gov) and enter "SFO 1.1" in the search field on the tool bar on the Home Page; select "Continue" under "EPA Miscellaneous Payments – Cincinnati Finance Center;" and open the form and complete the required fields. Once payment has been effected, Respondent shall email proof of payment to [cooperstein.ethan@epa.gov](mailto:cooperstein.ethan@epa.gov) and [wise.milton@epa.gov](mailto:wise.milton@epa.gov) with ***In the Matter of VDM USA, LLC, TSCA-02-2024-9106*** as the subject line.

d. Whether Respondent makes the payment by cashier's check, certified check or by the EFT method, Respondent shall, promptly when payment has been made, furnish reasonable proof that the required payment has been made, and such proof shall be furnished to the EPA representative identified in Paragraph 28 below.

18. Failure to pay the penalty in full according to the above provisions will result in the referral of this matter to the U.S. Department of Justice or the U.S. Department of the Treasury for collection.

19. Further, pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, the EPA is entitled to assess interest, administrative costs and late payment penalties on outstanding debts owed to the United States, including the United States Environmental Protection Agency, and a charge to cover costs of processing and handling delinquent claims.

a. Interest: Any unpaid portion of a civil penalty must bear interest at the rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717(a)(1). Interest will therefore begin to accrue on any portion of the civil penalty not paid by the relevant due date(s) specified above. Forty C.F.R. § 13.11 (a)(1) provides for assessing the annual rate of interest that is equal to the rate of the current value of funds to the

United States Treasury (i.e., the Treasury tax and loan account rate) on installment payments.

b. Handling Charges: Pursuant to 31 U.S.C. § 3717(e)(1), a monthly handling charge of fifteen dollars (\$15.00) shall be assessed for each thirty (30) day calendar period, or any portion thereof, following the date the payment was to have been made, in which payment of the amount remains in arrears.

c. Late Penalty Charge: A late penalty charge of six percent (6%) per year will be assessed monthly on any portion of the civil penalty that remains delinquent more than ninety (90) calendar days. 40 C.F.R. § 13.11(c). The late payment penalty on any portion of the civil penalty that remains delinquent more than ninety days shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d).

20. The civil penalty (including any payment of interest, late payment or handling charge) herein constitutes a “penalty” within the meaning of 26 U.S.C. § 162(f) and is not a deductible expenditure for purposes of federal or state law.

### **General Provisions**

21. Respondent explicitly and knowingly consents to the assessment of the civil penalty as set forth in this Consent Agreement and agrees to pay the penalty in accordance with the terms of this Consent Agreement.

20. Respondent’s compliance with this Consent Agreement, including full payment of the penalty, shall only resolve Respondent’s liability for federal civil penalties for the violation(s) and fact(s) described in the “Findings of Fact” and “Conclusions of Law” sections, above. Full payment of this penalty shall not in any case affect the right of the EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violation(s) of this Consent Agreement and shall not in any case affect the right of the EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

21. Respondent has read the Consent Agreement, understands its terms, finds it to be reasonable, and consents to its issuance and its terms. Respondent consents to the issuance of the accompanying Final Order. Respondent agrees that all terms of settlement are set forth herein.

22. Respondent hereby waives its right to seek or to obtain any hearing (pursuant to Subpart D of 40 C.F.R. Part 22) or other judicial proceeding on the assertions contained in the "Findings of Fact" section, above, and the allegations contained in the "Conclusions of Law" section, above, or on any allegations arising thereunder. Respondent further waives its right otherwise to contest all such assertions and/or allegations.

23. Respondent agrees not to contest the validity or any term of this CAFO in any action brought: a) by the United States, including the EPA, to enforce this Consent Agreement or Final Order; or b) to enforce a judgment relating to this CAFO. Any failure by Respondent to perform fully any requirement herein will be considered a violation of this CAFO and may subject Respondent to a civil judicial action by the United States to enforce the provisions of this CAFO. Respondent further waives any right it may have to appeal this CAFO.

24. This CAFO does not waive, extinguish, or otherwise affect Respondent's obligation to comply with all applicable federal, state, or local laws, rules, or regulations, nor shall it be construed to be a ruling on, or a determination of, any issue related to any federal, state, or local permit. This CAFO does not waive, extinguish, or otherwise affect Respondent's obligation to comply with all applicable provisions of TSCA and the regulations promulgated thereunder.

25. The provisions of this CA/FO shall be binding upon Respondent, its officials, authorized representatives, and successors or assigns.

26. The signatory for the Respondent certifies that: (a) he or she is duly and fully authorized to enter into and ratify this CAFO and (b) he or she is duly and fully authorized to bind the party on behalf of whom (which) he or she is entering this CAFO to comply with and abide by all the terms, provisions, and requirements of this CAFO.

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

28. Except as the parties may otherwise agree in writing, all documentation and information required to be submitted to the EPA in accordance with the terms and conditions of this Consent Agreement shall be sent by electronic mail (unless not technically feasible given document type or size, then in hard copy) to the following.

Ethan Cooperstein, TSCA Enforcement Officer  
U.S. Environmental Protection Agency – Region 2  
Pesticides and Toxic Substances Compliance Branch  
2890 Woodbridge Avenue (MS-225)  
Edison, NJ 08837  
cooperstein.ethan@epa.gov

29. Unless the above-named EPA contact is later advised otherwise in writing, the EPA shall provide any future written communications related to this matter (including any correspondence related to payment of the penalty) to Respondent by electronic mail at [tony.elfstrom@vdm-metals.com](mailto:tony.elfstrom@vdm-metals.com). In cases where electronic mail is not feasible given document type or size, such correspondence will be mailed to Respondent at the following address.

Tony Elfstrom  
President and CEO, USA  
VDM Metals USA, LLC  
306 Columbia Turnpike  
Florham Park, NJ 07932

30. Complainant shall provide to Respondent a copy of the fully executed CAFO. Respondent consents to service of this CAFO by electronic mail and consents to service upon it by an employee of the EPA other than the Regional Hearing Clerk.

31. The EPA and Respondent agree that the parties may use electronic signatures for this matter.



**RESPONDENT: VDM Metals USA, LLC**

BY: \_\_\_\_\_  
  Authorizing signature

NAME: \_\_\_\_\_  
  (PLEASE PRINT)

TITLE: \_\_\_\_\_

DATE: \_\_\_\_\_

**COMPLAINANT:**

\_\_\_\_\_  
Christine Ash, Acting Director  
Enforcement and Compliance Assurance Division  
U.S. Environmental Protection Agency – Region 2  
290 Broadway  
New York, NY 10007

DATE: \_\_\_\_\_

**In the Matter of VDM Metals USA, LLC  
Docket Number TSCA-02-2024-9106**

**FINAL ORDER**

The Regional Judicial Officer of the U.S. Environmental Protection Agency, Region 2, concurs in the foregoing Consent Agreement in the case of In the Matter of VDM Metals USA, LLC bearing Docket Number TSCA-02-2024-9106. Said Consent Agreement, having been duly accepted and entered into by the parties, shall be, and hereby is, ratified, incorporated into and issued, as this Final Order, which shall become effective when filed with the Regional Hearing Clerk of the United States Environmental Protection Agency, Region 2.40 C.F.R. § 22.31(b). This Final Order is being entered pursuant to the authority of 40 C.F.R. § 22.18(b)(3) and shall constitute an order issued under authority of Section 6 of the Toxic Substances Control Act, 15 U.S.C. § 2605 for purposes of Section 15(1)(C) of TSCA 15 U.S.C. § 2614(1)(C).

DATE: \_\_\_\_\_

\_\_\_\_\_  
Helen Ferrara  
Regional Judicial Officer  
U.S. Environmental Protection Agency, Region 2  
290 Broadway  
New York, New York 10007

**In the Matter of VDM Metals USA, LLC  
Docket Number TSCA-02-2024-9106**

**CERTIFICATE OF SERVICE**

I certify that I have this day caused to be sent the foregoing fully executed CONSENT AGREEMENT and FINAL ORDER, bearing the above-referenced Docket Number, in the following manner to the respective addressees below:

By E-mail: Office of the Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 2  
290 Broadway, 16th Floor (1631)  
New York, New York 10007-1866  
maples.karen@epa.gov

By E-mail: Tony Elfstrom  
President and CEO, USA  
VDM Metals USA, LLC  
306 Columbia Turnpike  
Florham Park, NJ 07932  
tony.elfstrom@vdm-metals.com

Signed: \_\_\_\_\_  
Ethan Cooperstein  
Pesticides and Toxic Substances Compliance Branch  
U.S. Environmental Protection Agency, Region 2  
2890 Woodbridge Avenue (MS-225)  
Edison, New Jersey 08837-3679