

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

In the Matter of:

**Colonial Metals, Inc.
505 Blue Ball Road
Elkton, MD 21921**

Respondent

**Colonial Metals, Inc.
505 Blue Ball Road
Elkton, MD 21921**

Facility

Docket No. EPCRA-03-2016-0047

CONSENT AGREEMENT

**Proceeding under EPCRA §§ 313 and
325(c), 42 U.S.C. §§ 11023 and 11045(c)**

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REGIONAL OFFICE OF THE
ENVIRONMENTAL PROTECTION AGENCY
ELKTON, MD

CONSENT AGREEMENT

Preliminary Statement

This Consent Agreement is entered into by the Director of the Land and Chemicals Division, U.S. Environmental Protection Agency, Region III ("Complainant"), and Colonial Metals, Inc. ("Respondent"), pursuant to Sections 313 and 325(c) of the Emergency Planning and Community Right-to-Know Act of 1986 ("EPCRA"), 42 U.S.C. §§ 11023 and 11045(c), the regulations implementing EPCRA § 313, as set forth at 40 C.F.R. Part 372, 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. Pursuant to 40 C.F.R. §§ 22.13(b) and .18(b)(2) and (3), this Consent Agreement and the accompanying Final Order (collectively, "CAFO"), simultaneously commence and conclude this proceeding to resolve violations of EPCRA § 313, 42 U.S.C. § 11023 and implementing regulations promulgated thereunder, as alleged herein, by Respondent at its facility located at 505 Blue Ball Road, Elkton, Maryland, 21921.

General Provisions

1. For purposes of this proceeding only, Respondent admits the jurisdictional allegations set forth in this CAFO.
2. Except as provided in Paragraph 1, above, Respondent neither admits nor denies the specific factual allegations and legal conclusions set forth in this CAFO.

3. Respondent agrees not to contest the jurisdiction of EPA with respect to the execution of this Consent Agreement, the issuance of the attached Final Order, or the enforcement of this CAFO.
4. For purposes of this proceeding only, Respondent hereby expressly waives any right to contest any issue of law or fact set forth in this Consent Agreement and any right to appeal the accompanying Final Order.
5. Respondent consents to the issuance of this CAFO and agrees to comply with its terms and conditions.
6. Respondent shall bear its own costs and attorney's fees in connection with this proceeding.

Findings of Fact and Conclusions of Law

7. In accordance with Sections 22.13(b) and .18(b)(2) of the Consolidated Rules of Practice, Complainant adopts the following findings of fact and conclusions of law.
8. EPCRA Section 313(a), 42 U.S.C. § 11023(a), requires subject owners or operators of any facility that, in any calendar year, manufactures, processes or otherwise uses a toxic chemical listed under EPCRA Section 313(c), 42 U.S.C. § 11023(c), in quantities exceeding a regulatory threshold under EPCRA Section 313(f), 42 U.S.C. § 11023(f), to complete and submit a toxic chemical release inventory report (*i.e.*, "Form R" or "Form A") for each such listed toxic chemical. Pursuant to EPCRA Section 313(a), 42 U.S.C. § 11023(a), each required Form R or Form A must include the information required under Section 313(g) of EPCRA, 42 U.S.C. § 11023(g), and must be submitted to EPA and to the designated State agency by July 1 of the year following the year for which such toxic inventor report is required.
9. EPCRA Section 313(b), 42 U.S.C. § 11023(b), and 40 C.F.R. § 372.22 provide, in relevant and applicable part, that a facility which meets the following criteria for a calendar year is a "covered facility" for that calendar year and must report under 40 C.F.R. § 372.30: [a] the facility has 10 or more full-time employees; [b] the facility is in a Standard Industrial Classification ("SIC") (as in effect on January 1, 1987) major group or industrial code listed in 40 C.F.R. § 372.23(a), for which the corresponding North American Industrial Classification System ("NAICS") (as in effect on January 1, 2007, for reporting year 2008 and thereafter) subsector and industry codes are listed in 40 C.F.R. § 372.23(b) and (c) by virtue of the fact that the facility is an establishment with a primary SIC major group or industry code listed in 40 C.F.R. § 372.23(b) or 40 C.F.R. § 372.23(c); and [c] the facility manufactured (including imported), processed or otherwise used a toxic chemical in excess of an applicable threshold quantity of that chemical set forth in 40 C.F.R. § 372.25, 372.27, or 372.28.

10. 40 C.F.R. § 372.30(a) provides, in relevant part, that for each toxic chemical known by the owner or operator to be manufactured (including imported), processed, or otherwise used in excess of an applicable threshold quantity in 40 C.F.R. § 372.25, 372.27, or 372.28 at its covered facility for a calendar year, the owner or operator must submit to EPA and to the State in which the covered facility is located a completed EPA Form R (EPA Form 9350-1) or Form A (EPA Form 9350-2) in accordance with the instructions referred to in 40 C.F.R. Part 372, Subpart E.
11. 40 C.F.R. § 372.30(d) provides, in relevant part, that : “[e]ach report under this section for activities involving a toxic chemical that occurred during a calendar year at a covered facility must be submitted on or before July 1 of the next year.”
12. Section 329(4) of EPCRA, 42 U.S.C. § 11049(4), and 40 C.F.R. § 372.3 define “facility” to mean, in relevant part, all buildings, equipment, structures, and other stationary items that are located on a single site and that are owned or operated by the same person.
13. Section 329(7) of EPCRA, 42 U.S.C. § 11049(7), defines “person” to include any corporation.
14. Respondent is incorporated in the State of Maryland and is a “person” as defined in Section 329(7) of EPCRA, 42 U.S.C. § 11049(7).
15. Respondent owns and operates, and at the time of the violations alleged herein, owned and operated a metal manufacturing and refining plant located at 505 Blue Ball Road, Elkton, Maryland, 21921 (“Facility”).
16. Respondent’s Facility is a “facility” as defined in Section 329(4) of EPCRA, 42 U.S.C. § 11049(4), and 40 C.F.R. § 372.3.
17. During the 2013 calendar year, Respondent employed 10 or more full-time employees at the Facility.
18. During the 2013 calendar year, the Facility had a SIC code of 2819.
19. For purposes of the toxic chemical release reporting requirements, the Facility was a “covered facility,” within the meaning of 40 C.F.R. §§ 372.22 and 372.30(c), in the 2013 calendar year.

Count I – Nickel Compounds - 2013

20. The preceding paragraphs are incorporated by reference.
21. “Nickel Compounds” are listed as a chemical category in 40 C.F.R. § 372.65(c) and are a

“toxic chemical” as defined in EPCRA §§ 313(c) and 329(10), 42 U.S.C. §§ 11023(c) and 11049(10), and 40 C.F.R. § 372.3.

22. As set forth in Section 313(f)(1)(B)(iii) of EPCRA, 42 U.S.C. § 11023(f)(1)(B)(iii), and 40 C.F.R. § 372.25, the reporting threshold amount for nickel compounds manufactured at a facility is 25,000 pounds.
23. Respondent manufactured more than 25,000 pounds of nickel compounds at the Facility during the 2013 calendar year.
24. Pursuant to EPCRA § 313(a), 42 U.S.C. § 11023(a) and 40 C.F.R. § 372.30, Respondent was required to submit to the Administrator of EPA and the State of Maryland by July 1 of 2014, a completed Form R or Form A for the nickel compounds manufactured at the Facility during the calendar year 2013.
25. Respondent filed a complete Form R or Form A for the toxic chemical nickel compounds manufactured at the Facility during calendar year 2013 with the Administrator of EPA and the State of Maryland on or about April 22, 2015.
26. Respondent’s failure to timely file a complete Form R or Form A with EPA or the State of Maryland for the toxic chemical nickel compounds manufactured at the Facility during calendar year 2013, by July 1, 2014, constitutes one violation of Section 313 of EPCRA, 42 U.S.C. § 11023 and 40 C.F.R. § 372.30.

Count II – Chlorine - 2013

27. The preceding paragraphs are incorporated by reference.
28. Chlorine is listed as a chemical in 40 C.F.R. § 372.65(a) and is a “toxic chemical” as defined in EPCRA §§ 313(c) and 329(10), 42 U.S.C. §§ 11023(c) and 11049(10), and 40 C.F.R. § 372.3.
29. As set forth in Section 313(f)(1)(B)(iii) of EPCRA, 42 U.S.C. § 11023(f)(1)(B)(iii), and 40 C.F.R. § 372.25, the reporting threshold amount for chlorine otherwise used at a facility is 10,000 pounds.
30. Respondent otherwise used more than 10,000 pounds of chlorine at the Facility during the 2013 calendar year.
31. Pursuant to EPCRA § 313(a), 42 U.S.C. § 11023(a), and 40 C.F.R. § 372.30, Respondent was required to submit to the Administrator of EPA and the State of Maryland by July 1 of 2014, a completed Form R or Form A for the chlorine otherwise used at the Facility during the calendar year 2013.

32. Respondent filed a complete Form R or Form A for the toxic chemical chlorine at the Facility during calendar year 2013 with the Administrator of EPA and the State of Maryland on or about April 22, 2015.
33. Respondent's failure to timely file a complete Form R or Form A with EPA or the State of Maryland for the toxic chemical chlorine otherwise used at the Facility during calendar year 2013, by July 1, 2014, constitutes one violation of Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. § 372.30.

Settlement

34. Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), provides that any person who violates EPCRA § 313, 42 U.S.C. § 11023, shall be liable to the United States for a civil penalty of up to \$25,000 per violation. Pursuant to the Adjustment of Civil Monetary Penalties for Inflation, 40 C.F.R. Part 19, violations of Section 313 of EPCRA, 42 U.S.C. § 11023, which occurred between March 16, 2004 and January 12, 2009, are subject to an increased statutory maximum penalty of \$32,500 per violation and that the maximum inflation-adjusted penalty for violations occurring after January 12, 2009 is \$37,500 per violation.
35. In settlement of EPA's claims for civil monetary penalties for the violations alleged in this Consent Agreement, Respondent agrees to: (1) the assessment of a civil penalty in the amount of FOUR THOUSAND DOLLARS (\$4,000.00), which Respondent agrees to pay in accordance with the terms set forth below, and (2) perform the Supplemental Environmental Project set forth below.
36. The aforesaid settlement amount set forth above in Paragraph 35, above, is based on a number of factors, including, but not limited to, the facts and circumstances of this case, the statutory factors set forth in EPCRA § 325(b)(1)(C), 42 U.S.C. § 11045(b)(1)(C), and the penalty criteria set forth in EPA's *Enforcement Response Policy for Section 313 of the Emergency Planning and Community Right-to-Know Act (1986)* (August 10, 1992), as amended. Complainant has also considered the appropriate *Adjustment of Civil Monetary Penalties for Inflation*, pursuant to 40 C.F.R. Part 19, and the December 6, 2013 memorandum by EPA Assistant Administrator Cynthia Giles, entitled *Amendments to the U.S. Environmental Protection Agency's Civil Penalty Policies to Account for Inflation (Effective December 6, 2013)*. The settlement in this proceeding is consistent with the provisions and objectives of EPCRA § 313, 42 U.S.C. § 11023, and 40 C.F.R. Part 372.

Payment Terms

37. The civil penalty amount set forth in Paragraph 35, above, shall become due and payable immediately upon Respondent's receipt of a true and correct copy of this CAFO, fully executed by all parties, signed by the Regional Administrator or the Regional Judicial Officer, and filed with the Regional Hearing Clerk. 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 CAFO is mailed or hand-delivered to Respondent.
38. Respondent shall pay the civil penalty amount assessed in Paragraph 35, above, plus any interest, administrative fees, and late payment penalties owed, in accordance with Paragraphs 39 through 40, below, by either cashier's check, certified check, or electronic wire transfer, in the following manner:
- a. All payments by Respondent shall reference Respondent's name and address, and the Docket Number of this action, *i.e.*, EPCRA-03-2016-0047;
 - 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 to:

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

Customer service contact: 513-487-2091
 - d. All payments made by check and sent by private commercial overnight delivery service shall be addressed for delivery to:

U.S. Environmental Protection Agency
Government Lockbox 979077
Cincinnati Finance Center
1005 Convention Plaza
Mail Station SL-MO-C2-GL
St. Louis, MO 63101

Contact: 314-418-1818
 - e. All payments made by check in any currency drawn on banks with no USA

branches shall be addressed for delivery to:

Cincinnati Finance
US EPA, MS-NWD
26 W. M.L. King Drive
Cincinnati, OH 45268-0001

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

Federal Reserve Bank of New York
ABA = 021030004
Account No. = 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”

- g. All electronic payments made through the Automated Clearinghouse (ACH), also known as Remittance Express (REX), shall be directed to:

US Treasury REX / Cashlink ACH Receiver
ABA = 051036706
Account No.: 310006, Environmental Protection Agency
CTX Format Transaction Code 22 - Checking

Physical location of U.S. Treasury facility:
5700 Rivertech Court
Riverdale, MD 20737

Contact: 866-234-5681

- h. On-Line Payment Option:

WWW.PAY.GOV/paygov/

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

- i. Additional payment guidance is available at:

<http://www.2epa.gov/financial/makepayment>

- j. At the time of payment, Respondent shall simultaneously send a notice of Payment, including a copy of Respondent's check or electronic fund transfer notice, as applicable, to:

Joyce A. Howell
Senior Assistant Regional Counsel
U.S. EPA, Region III (3RC30)
1650 Arch Street
Philadelphia, PA 19103-2029

and

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

39. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim, as more fully described below. Accordingly, Respondent's failure to make timely payment as specified herein shall result in the assessment of late payment charges including interest, penalties, and/or administrative costs of handling delinquent debts.
40. Interest on the civil penalty assessed in this CAFO will begin to accrue on the date that a true and correct copy of this CAFO is mailed or hand-delivered to Respondent. However, EPA will 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 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).
41. The costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period a debt is overdue. 40 C.F.R. § 13.11(b). 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.
42. A late payment penalty of six percent per year will be assessed monthly on any portion of the civil penalty that remains delinquent more than ninety (90) calendar days. 40 C.F.R. § 13.11(c). Should assessment of the penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d).
43. Respondent agrees not to deduct for federal tax purposes the civil monetary penalty assessed in this CAFO.

Supplemental Environmental Project

44. The following Supplemental Environmental Project (“SEP”) is consistent with applicable EPA policy and guidelines, including EPA’s *Supplemental Environmental Projects Policy*, effective March 10, 2015.
45. Respondent agrees to implement a Compliance Focused Environmental Management System (“CFEMS”) and obtain ISO 140001 Certification to:
 - A. Provide tools to plan and conduct current, on-going and future business in a way that will lessen impacts on the environment.
 - B. Improve the environmental impact of Respondent’s products, processes and operation through continuous review.
 - C. Place focus on Respondent’s consumption of raw materials and resources.
 - D. Place focus on reducing Respondent’s waste and hazardous materials generation.
 - E. Achieve improved compliance with environmental laws and regulations.
46. Respondent shall perform the SEP in accordance with the following schedule:
 - A. No later than ten (10) days after this CAFO becomes effective, Respondent shall select the Certification Body for its ISO 140001 certification application.
 - B. No later than thirty (30) days after this CAFO becomes effective, Respondent shall complete the ISO 140001 questionnaire allowing the ISO 140001 Certification Body to assess the nature, scale and complexity of Respondent’s organization and Environmental Management System (EMS) processes already in place.
 - C. No later than forty (40) days after this CAFO becomes effective, Respondent shall submit its EMS document to an independent auditor for review for the purpose of evaluating Respondent’s EMS for compliance with ISO 140001 requirements.
 - D. No later than eight (8) months after this CAFO becomes effective, Respondent shall complete its First Stage Assessment (FSA). The FSA shall consist of a Facility site tour and Facility system overview. A report will be written at the completion of the FSA identifying any nonconformity and a corrective action plan for any nonconformity identified by the FSA.
 - E. No later than ten (10) months after this CAFO becomes effective, Respondent shall undergo a Certification Assessment. At a minimum, the Certification Assessment shall review the effectiveness of the implemented EMS against the

ISO 14001 Standard.

- F. No later than eleven (11) months after this CAFO becomes effective, Respondent shall complete a report of the Certification Assessment. The report will describe the effectiveness of the Facility's implemented EMS against the ISO 14001 Standard. The Certification Assessment report shall further describe any deficiencies found and the Facility plan to correct such deficiencies.
 - G. No less than twelve (12) months after this CAFO becomes effective, Respondent shall correct any deficiencies noted in the Certification Assessment report.
 - H. No less than thirteen (13) months after this CAFO becomes effective, Respondent shall obtain ISO 14001 certification.
47. Respondent's total expenditure for installation of this SEP shall not be less than ELEVEN THOUSAND FOUR HUNDRED TWENTY FIVE DOLLARS (\$11,425.00). Respondent shall include documentation of the expenditures made in connection with the SEP as part of the SEP Completion Report described in Paragraph 52, below.
48. Respondent hereby certifies that:
- A. as of the date of its signature to this CA, Respondent is not required to perform or develop this SEP by any federal, state or local law or regulation;
 - B. it is not required to perform or develop this SEP by any other agreement, grant or as injunctive relief in this or any other case;
 - C. it has not received, and is not presently negotiating to receive, credit in any other enforcement action for this SEP;
 - D. it will not receive reimbursement for any portion of the SEP from another person or entity.
49. For federal income tax purposes, Respondent agrees that it will neither capitalize into inventory or basis nor deduct any costs or expenditures incurred in performing this SEP.
50. Any public statement, oral or written, in print, film, or other media, made by Respondent making reference to the SEP under this Consent Agreement, from the effective date of the CAFO, shall include the following language: "This project was undertaken in connection with the settlement of an administrative enforcement action initiated by the United States Environmental Protection Agency against Colonial Metals, Inc., to enforce federal laws."
51. Respondent shall submit a written SEP Implementation Report to EPA, c/o Craig Yussen, US EPA Region III, 1650 Arch Street (Mail Code 3LC61), Philadelphia, PA 19103-2029 within seven (7) days of correcting any deficiencies noted in the Certification Assessment Report pursuant to Paragraph 46.G. The SEP Implementation Report shall include the following elements:

- A. A copy of the independent auditor's report.
 - B. A copy of the FSA report and a description of the measures taken by Respondent to correct any nonconformity found by the FSA.
 - C. A copy of the Certification Assessment and a description of the measures taken to correct and deficiencies found by the Certification Assessment.
 - D. A description of any unforeseen problems encountered during implementation of the SEP and a statement as to whether such problems will impact the timely completion of the SEP.
52. Respondent shall submit a written SEP Completion Report to EPA, c/o Craig Yussen, US EPA Region III, 1650 Arch Street (Mail Code 3LC61), Philadelphia, PA 19103-2029 within thirty (30) days of the date when the CFEMS has been implemented and ISO 14001 certification has been conferred pursuant to Paragraph 46.H. The SEP Completion Report shall contain the following information:
- A. A copy of Respondent's ISO 140001 certification and CFEMS and a description of any implementation or operational problems encountered and the solution thereto;
 - B. Itemized costs of each SEP expenditure, along with the a sum total of all costs incurred by the Respondent that are eligible for SEP credit; and
 - i. In addition to itemizing each SEP expenditure identified in its SEP Completion Report, Respondent shall clearly identify and provide full, complete and acceptable financial documentation evidencing its actual payment of all eligible SEP costs;
 - ii. Where the SEP Completion Report includes costs not eligible for SEP credit, those costs must be clearly identified as such;
 - iii. For purposes of this Paragraph, "acceptable financial documentation" includes payment invoices, purchase orders, payment receipts, or other documentation that specifically identifies and itemizes the individual costs of the goods and/or services for which payment was made. Canceled drafts do not constitute acceptable documentation unless such drafts specifically identify and itemize the individual costs of the goods and/or services for which payment was made.
 - C. Respondent shall, by its representative officers, sign the SEP Implementation Report and the SEP Completion Report required by Paragraph 52 and certify under penalty of law, that the information contained therein is true, accurate, and not misleading by including and 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.

- D. Respondent agrees that failure to submit the written SEP Implementation Report required by Paragraph 51, above, and the failure to submit the written SEP Completion Report required by Paragraph 52, above, shall be deemed a violation of this CAFO and, in such event, Respondent will be liable for stipulated penalties pursuant to Paragraphs 55 through 57, below.
53. Respondent agrees that EPA may inspect the Facility at which this SEP is being implemented at reasonable times in order to confirm that this SEP is being undertaken in conformity with the requirements of this CAFO.
54. Upon receipt of the written SEP Completion Report, identified in Paragraph 52, above, EPA will provide written notification to the Respondent of one of the following:
- A. If the Report is deficient, notify the Respondent in writing that the Report is deficient, provide an explanation of the deficiencies, and grant Respondent an additional fourteen (14) calendar days to correct those deficiencies;
 - B. If the SEP Completion Report demonstrates that the SEP has been completed in accordance with the CAFO, notify the Respondent in writing that EPA has concluded that the SEP has been completed in accordance with this CAFO; or
 - C. If the SEP Completion Report demonstrates that the SEP has not been completed in accordance with this CAFO, notify the Respondent in writing that EPA has concluded that the SEP has not been completed in accordance with this CAFO and EPA shall seek stipulated penalties in accordance with Paragraphs 55 through 57, below.

If EPA provides notification in accordance with Paragraph 54 above, EPA shall permit Respondent the opportunity to object in writing to the notification of deficiency within ten (10) calendar days of receipt of such notification. EPA and Respondent shall have an additional thirty (30) calendar days from the receipt by EPA of the notification of objection to reach an agreement on changes necessary to properly implement the SEP, operate the SEP and/or complete the SEP, and to revise and re-submit the relevant Report. If agreement cannot be reached within this thirty (30) calendar day period, a person who holds a management position at EPA shall provide to the Respondent a written statement of EPA's decision on the adequacy of the implementation and/or operation of the SEP, and the adequacy of any Report Respondent is required to submit pursuant to this CAFO, which shall be a final Agency action binding upon Respondent. In the event this SEP is not completed as required by this CAFO, as determined by EPA, stipulated penalties shall be

due and payable by Respondent to EPA in accordance with Paragraphs 55 through 57, below.

Stipulated Penalties

55. 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, described in Paragraphs 45 - 46, above, submission of the written SEP Implementation Report and the written SEP Completion Report, described in Paragraphs 51 and 52, respectively, and/or to the extent that the actual expenditures for the SEP do not equal or exceed the costs set forth in Paragraph 47, above, Respondent shall be liable for stipulated penalties according to the provisions set forth below:
- A. Except as provided in Subparagraph B below, of this Paragraph 55, if the SEP has not been installed and operated satisfactorily pursuant to this CAFO, Respondent shall pay a stipulated penalty to EPA in the amount of FOUR THOUSAND DOLLARS (\$4,000.00);
 - B. If the SEP is not completed in accordance with Paragraph 45 - 46, above, but the Complainant determines that: (i) Respondent made good faith and timely efforts to install and operate the SEP; and (ii) Respondent certifies, with supporting documentation, that at least ninety percent (90%) of the amount of money which was required to be spent was expended on the SEP, Respondent shall not be liable for any stipulated penalty;
 - C. If the SEP is implemented and operated in accordance with Paragraph 45 - 46, above, and the SEP Completion Report is submitted in accordance with Paragraph 52, above, but the Respondent spent less than ninety percent (90%) of the amount of money required to be spent on the SEP, Respondent shall pay a stipulated penalty to EPA in the amount of FOUR THOUSAND DOLLARS (\$4,000.00);
 - D. If the SEP is completed in accordance with Paragraph 46 - 47, above, the SEP Completion Report is submitted in accordance with Paragraph 52, above, and the Respondent spent at least ninety percent (90%) of the amount of money required to be spent on the SEP, Respondent shall not be liable for any stipulated penalty; and
 - E. If Respondent fails to timely submit the SEP Implementation Report and/or SEP Completion Report as required by Paragraphs 51 and 52, above, Respondent shall pay a stipulated penalty in the amount of \$250.00 per day for each calendar day after the report was originally due until the Report(s) is/are submitted, up to a maximum amount set forth in Paragraph 57, below.
56. The determination of whether the SEP has been satisfactorily implemented and whether the Respondent has made a good faith, timely effort to implement the SEP shall be in the sole

discretion of EPA.

57. Respondent shall pay stipulated penalties, in accordance with Paragraph 55 above, and in the manner described in Paragraph 38, above, not more than fourteen (14) calendar days after receipt of written demand from EPA for such penalties. Interest and late charges shall be paid as set forth in Paragraphs 39 through 42, above, as applicable. In no event will stipulated penalties due under Paragraph 55 exceed \$4,000.00.

Certification

58. The individual who signs this Consent Agreement on behalf of Respondent certifies that the Facility referred to in this Consent Agreement is currently in compliance with all applicable requirements of EPCRA Section 313, 42 U.S.C. § 11023.

Other Applicable Laws

59. Nothing in this CAFO shall relieve Respondent of its obligation to comply with all applicable federal, state, and local laws and regulations.

Reservation of Rights

60. This Consent Agreement and the accompanying Final Order resolve only EPA's claims for civil penalties for the specific violations of EPCRA Section 313, 42 U.S.C. § 11023, alleged herein. 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 EPCRA, the regulations promulgated thereunder, and any other federal laws or regulations for which EPA has jurisdiction, to enforce the provisions of this CAFO, following its filing with the Regional Hearing Clerk.

Scope of Settlement

61. The settlement set forth in this CAFO shall constitute full and final satisfaction of Complainant's civil claims for penalties for the specific violations alleged herein. Compliance with the CAFO 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.

Parties Bound

62. This Consent Agreement and the accompanying Final Order shall apply to and be binding upon the EPA, the Respondent and the officers, directors, employees, contractors, successors, agents, and assigns of Respondent. By his or her signature below, the person who signs this Consent Agreement on behalf of Respondent is acknowledging that he or she is fully authorized by the party represented to execute this Consent Agreement and to

legally bind Respondent to the terms and conditions of this Consent Agreement and the accompanying Final Order.

Effective Date

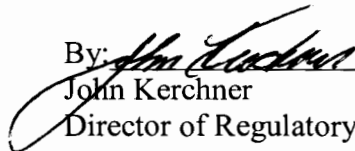
63. The effective date of this Consent Agreement and the accompanying Final Order is the date on which the Final Order, signed by the Regional Administrator of EPA, Region III, or his designee, the Regional Judicial Officer, is filed with the Regional Hearing Clerk pursuant to the Consolidated Rules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

Entire Agreement

64. 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 CAFO.

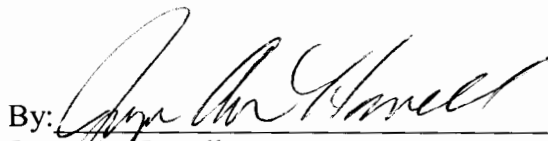
For Respondent:

Date: 3/9/16

By: 
John Kerchner
Director of Regulatory Compliance

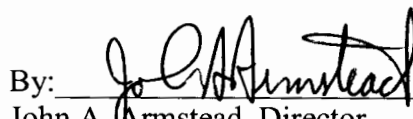
For Complainant:

Date: 3/16/16

By: 
Joyce A. Howell
Senior Assistant Regional Counsel

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

Date: 3.21.16

By: 
John A. Armstead, Director
Land and Chemicals Division

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

In the Matter of:

**Colonial Metals, Inc.
505 Blue Ball Road
Elkton, MD 21921**

Respondent

**Colonial Metals, Inc.
505 Blue Ball Road
Elkton, MD 21921**

Facility

Docket No. EPCRA-03-2016-0047

**Proceeding under EPCRA §§ 313
and 325(c), 42 U.S.C. §§ 11023 and
11045(c)**

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REGIONAL HEARING
EPA REGION III PHILADELPHIA

FINAL ORDER

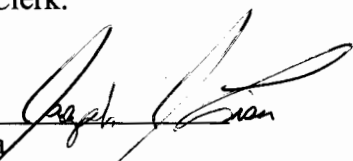
Complainant, the Director of the Land and Chemicals Division, U.S. Environmental Protection Agency, Region III, and Respondent, Colonial Metals, Inc., have executed a document entitled "Consent Agreement," which I hereby ratify as a Consent Agreement in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits ("Consolidated Rules of Practice"), 40 C.F.R. Part 22 (with specific reference to Sections 22.13(b) and 22.18(b)(2) and (3)). The terms of the foregoing Consent Agreement are accepted by the undersigned and incorporated into this Final Order as if fully set forth at length herein.

Based on the representations of the parties in the attached Consent Agreement, the penalty agreed to therein is based upon consideration of, *inter alia*, EPA's *Enforcement Response Policy for Section 313 of the Emergency Planning and Community Right-to-Know Act (1986)* and Section 6607 of the Pollution Prevention Act (1990), April 12, 2001, the statutory factors set forth in EPCRA § 325(b)(1)(C), 42 U.S.C. § 11045(b)(1)(C), and the provisions and objectives of EPCRA § 313, 42 U.S.C. § 11023.

NOW, THEREFORE, PURSUANT TO Section 325(c) of the Emergency Planning and Community Right-to-Know Act of 1986 ("EPCRA"), 42 U.S.C. § 11045(c), and the Consolidated Rules of Practice, **IT IS HEREBY ORDERED** that Respondent pay a civil penalty of **FOUR THOUSAND DOLLARS (\$4,000.00)**, as specified in the Consent Agreement, and comply with the terms and conditions of the Consent Agreement.

The effective date of the foregoing Consent Agreement and this Final Order is the date on which this Final Order is filed with the Regional Hearing Clerk.

Date: March 22, 2016



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

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

In the Matter of:

**Colonial Metals, Inc.
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Respondent

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Docket No. EPCRA-03-2016-0047

CONSENT AGREEMENT

**Proceeding under EPCRA §§ 313 and
325(c), 42 U.S.C. §§ 11023 and 11045(c)**

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EPA - REGION III, PHILADELPHIA, PA

CERTIFICATE OF SERVICE

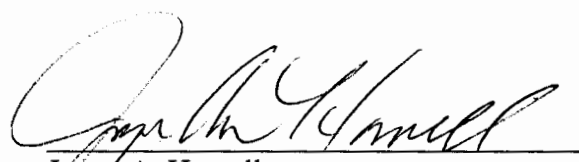
I certify that I sent a copy of the Consent Agreement and Final Order to the addressees listed below. The original and one copy of the Consent Agreement and Final Order were hand-delivered to the Regional Hearing Clerk, U.S. EPA Region III, 1650 Arch Street, Philadelphia, PA 19103-2029.

Via UPS, next day delivery:

Mr. George Benvegno, Jr.,
Vice President
Colonial Metals, Inc.
505 Blue Ball Road
Elkton, MD 21921

Michael V. Forlini, Esq.
Funk & Bolton
26 South Charles St.
12 floor
Baltimore, MD 21201

Dated: 3/22/2016


Joyce A. Howell
Senior Assistant Regional Counsel
U.S. EPA - Region III