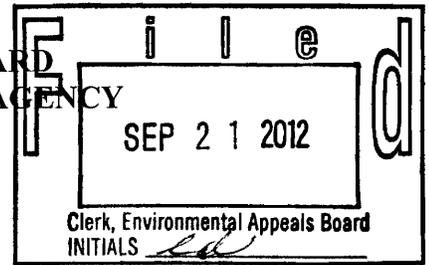


BEFORE THE ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.



_____)
In the Matter of:)

Titanium Metals Corp.)
Morgantown, PA)

Respondent)
_____)

Docket Number TSCA-HQ-2012-5019

FINAL ORDER

The United States Environmental Protection Agency as Complainant, and TIMET, as Respondent, the Parties herein, having signed and consented to entry of the attached Consent Agreement incorporated by reference into this Final Order,

NOW, THEREFORE IT IS ORDERED THAT:

1. Respondent, TIMET, shall comply with all terms of the Consent Agreement;
2. Respondent is assessed a civil penalty of **Two Hundred Fifty Eight Thousand One Hundred Seventy Six Dollars (\$258,176)**; and
3. Respondent shall, in accordance with the payment provisions set forth in the Consent Agreement, make payment via a certified or cashier's check or through a wire transfer as described in the Consent Agreement.

IT IS SO ORDERED.

By: [Signature]
Environmental Appeals Board

Dated: 9/20/12

CERTIFICATE OF SERVICE

I certify that the foregoing "Consent Agreement and Final Order," Titanium Metals Corporation, Docket No. TSCA-HQ-2012-5019, was filed and copies of the same were mailed to the parties as indicated below:

(Interoffice) Morgan Rog, Attorney-Advisor
Chemical Risk and Reporting Enforcement Branch
Waste and Chemical Enforcement Division
Office of Civil Enforcement/OECA/US EPA
1200 Pennsylvania Ave., NW (Mail Code 2249A)
Washington, DC 20460-0001
Fax: (202) 564-0035

(U.S. Mail) Sheila D. Jones
Council for Titanium Metals Corporation
Holland & Hart LLP
975 F Street, NW
Suite 900
Washington, DC 20004



Annette Duncan
Secretary

U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460-0001

Dated: 9/21/2012

over the subject matter in this Consent Agreement, and (2) consents to the terms of this Consent Agreement and Final Order.

3. The Respondent waives any defenses it might have as to jurisdiction.

II. EPA's FINDINGS OF FACT AND LAW

COUNTS 1-4

4. Section 8(a)(1)(A) of TSCA, 15 U.S.C. § 2607(a)(1)(A), authorizes the promulgation of rules by EPA under which each person who manufactures a chemical substance must maintain records and "submit to the Administrator such reports, as the Administrator may reasonably require,"
5. Pursuant to section 15(3)(B) of TSCA, 15 U.S.C. § 2614(3)(B), it is unlawful for any person to fail or refuse to submit reports, notices, or other information as required by TSCA or a rule thereunder.
6. Pursuant to 40 C.F.R. § 710.3, "person" means "any natural or juridical person including any individual, corporation, partnership, or association, any State or political subdivision thereof, or any municipality, and interstate body and any department, agency, or instrumentality of the Federal Government."
7. "Manufacture is defined by section 3(7) of TSCA, 15 U.S.C. § 2602(7), as "to import into the customs territory of the United States..., produce, or manufacture."
8. A "chemical substance" is defined by section 3(2)(A) of TSCA, 15 U.S.C. §2602(2)(A), as "any organic or inorganic substance of a particular molecular identity...."
9. Pursuant to 40 C.F.R. § 710.48(a), unless an exclusion applies, "[a]ny person who manufactured (including imported) for commercial purposes 25,000 pounds (11,340

kilograms) or more of a chemical substance [which is listed on the TSCA Master Inventory File] . . . at any single site owned or controlled by that person at any time during calendar year 2005 or during the calendar year at 5-year intervals thereafter is subject to reporting.”

10. A person subject to 40 C.F.R. § 710.48(a) is required to file a Partial Updating of the TSCA Inventory Data Base Site Report (Form U) with the EPA pursuant to 40 C.F.R. § 710.59.
11. The deadline for Form U submissions for the 2006 IUR period was March 23, 2007, *see* 40 C.F.R. § 710.53.
12. Respondent is a corporation that owns or controls a facility located at 900 Hemlock Road, Morgantown, PA, 19453.
13. Respondent is a “person” as defined in 40 C.F.R. § 710.3 and as such is subject to TSCA and the regulations promulgated thereunder.
14. Respondent “manufactures” a “chemical substance,” as defined above in Paragraphs 7 and 8.
15. During calendar year 2005, Respondent manufactured or imported for commercial purposes 25,000 pounds (11,340 kilograms) or more of the following chemical substances at the facility described in paragraph 12:
 - Chemical #1: Aluminum (Chemical Abstract Service Number 7429-90-5)
 - Chemical #2: Vanadium (CASN 7440-62-2)
 - Chemical #3: Titanium (CASN 7440-32-6)
 - Chemical #4: Zirconium (CASN 7440-67-7)
16. The chemical substances listed in paragraph 15 above are included in the TSCA Master Inventory File.
17. Respondent’s failure to submit a Form U for each of the chemical substances listed in paragraph 15 above by March 23, 2007 constitutes a failure to submit a report, notice or other information as required by 40 C.F.R. § 710.53.

18. Pursuant to section 15(3)(B) of TSCA, 15 U.S.C. § 2614(3)(B), it is unlawful for any person to fail or refuse to submit reports, notices, or other information as required by TSCA or a rule thereunder.
19. A violation of section 15(3)(B) of TSCA subjects an entity to civil penalties pursuant to section 16(a) of TSCA, 15 U.S.C. § 2615(a).

COUNTS 5-130

20. Paragraphs 5 through 8 are realleged and incorporated herein by reference.
21. EPA promulgated 19 C.F.R. § 12.121, pursuant to section 13 of TSCA, 15 U.S.C. § 2612, which requires importers to certify by a signed statement that any shipment of a chemical substance subject to TSCA, imported in bulk or as part of a mixture, complies with TSCA, and that is not offered for entry in violation of TSCA or any rule or order under TSCA, or that the chemicals imported are not subject to TSCA.
22. Beginning on March 20, 2007, and continuing to and including May 24, 2010, Respondent imported a chemical substance, Titanium (CASN 7440-32-6) on one hundred and twenty-six (126) different occasions and failed to submit the one hundred and twenty-six (126) certifications as required by 19 C.F.R. § 12.121.
23. Respondent's failure to comply with the required certification requirements of 19 C.F.R. § 12.121, promulgated to implement section 13 of TSCA, 15 U.S.C. § 2612, violates section 15 (3)(B) of TSCA, 15 U.S.C. § 2614(3)(B).
24. A person who violates section 15(3)(B) of TSCA, 15 U.S.C. § 2614(3)(B), is subject to a civil penalty pursuant to section 16(a) of TSCA, 15 U.S.C. § 2615(a).

III. CIVIL PENALTY

25. The proposed penalty in this matter is consistent with the *Enforcement Response Policy for Reporting and Recordkeeping Rules and Requirements for TSCA Sections 8, 12 and 13* (revised March 31, 1999; effective June 1, 1999) (*TSCA ERP*). The *TSCA ERP* was developed in accordance with the *Guidelines for Assessment of Civil Penalties under Section 16 of the Toxic Substances Control Act; PCB Penalty Policy*, which sets forth a general penalty assessment policy for TSCA violations. 45 Fed. Reg. 59,770 (Sept. 10, 1980). The *TSCA ERP*, though not a regulation, establishes a framework for applying the statutory factors to be considered in assessing a civil penalty, *i.e.*: “the nature, circumstances, extent and gravity of the violation or violations and, with respect to the violator, 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.” Section 16(a)(2)(B) of TSCA, 15 U.S.C. § 2615(a)(2)(B).
26. The proposed civil penalty in this case reflects: (1) a determination of the gravity-based penalty (GBP), in accordance with the statutory factors nature, circumstances, extent and gravity; and (2) adjustments to the GBP, taking into account the statutory factors ability to pay, effect on ability to continue business, prior violations, culpability, and such other matters as justice may require.
27. The GBP is determined by evaluating the nature, circumstances, and extent of the violation. In accordance with the *TSCA ERP*, the nature of the violations set forth in Counts 1 – 4 is “Hazard Assessment,” the circumstance level is “Level 1” and the extent level is “Significant.” The nature of the violations set forth in Counts 5 – 130 is “Hazard

- Assessment,” the circumstance level is “Level 6” and the extent level is “Significant.” The gravity factor is determined by the value at which, on the *TSCA ERP’s* GBP Matrix (page 8-A), the “circumstances” factor (vertical axis) intersects the “extent” factor (horizontal axis).
28. In accordance with the *TSCA ERP*, the GBP for Counts 1 – 4 ($\$21,922^1 \times 4$) is \$87,688; and the GBP for Counts 5-130 ($(\$1,676 \times 98) + (\$1,850^2 \times 28)$) is \$216,048.
29. For purposes of settlement, pursuant to section 16(a) of TSCA and the *TSCA ERP*, EPA has reduced the GBP by fifteen percent (15%) to reflect other relevant factors, such as the Respondent’s cooperation and general attitude to comply with TSCA. EPA has, therefore, determined that an appropriate and fair civil penalty to settle this action is \$258,176.

IV. TERMS OF SETTLEMENT

30. This settlement resolves only the civil administrative claims alleged in this Consent Agreement for Respondent’s facility located at 900 Hemlock Road, Morgantown, PA, 19453.
31. Respondent waives its right to request an administrative hearing pursuant to section 16(a)(2)(A) of TSCA, 15 U.S.C. § 2615(a)(2)(A), and waives its right to file a petition for judicial review of the Final Order assessing the civil penalty pursuant to section 16(a)(3) of TSCA, 15 U.S.C. § 2615(a)(3).
32. Respondent neither admits nor denies the allegations.

¹ The ERP matrix penalty amount has been increased pursuant to the Debt Collection Improvement Act of 1996, Civil Monetary Inflation Adjustment Rule, 69 Fed. Reg. 7,121 (February 13, 2004), codified at 40 C.F.R. Parts 19 and 27.

² The ERP matrix penalty amount has been increased pursuant to the Debt Collection Improvement Act of 1996, Civil Monetary Inflation Adjustment Rule, 73 Fed. Reg. 75,340 (December 11, 2008), codified at 40 C.F.R. Parts 19 and 27.

33. By executing this Consent Agreement, Respondent certifies that regarding the violations alleged herein, Respondent is in compliance with sections 8, 13 and 15 of TSCA; 15 U.S.C. §§ 2607, 2612 and 2614.
34. Respondent represents and warrants that the facts it has certified and referenced in this Consent Agreement are true.
35. The effect of this settlement (provided in paragraph 30) is conditioned upon the thoroughness and accuracy of the representations in Respondent's revised Form U submission and the certification referenced in paragraph 34.
36. Respondent agrees to pay a civil penalty in the sum of **Two Hundred Fifty Eight Thousand One Hundred Seventy Six Dollars (\$258,176)** in accordance with the following terms:
- A. Not more than thirty (30) calendar days after the effective date of the Final Order, Respondent shall either submit a cashier's or certified check with a notation of "Titanium Metals Corporation, Civil Penalty Docket No. TSCA-HQ-2012-5019," payable to the order of the "Treasurer, United States of America," to:

U.S. Environmental Protection Agency
Fines and Penalties
Docket No. TSCA-HQ-2012-5019
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

or pay by wire transfer with a notation of "Titanium Metals Corporation, Civil Penalty Docket No. TSCA-HQ-2012-5019" by using the following instructions:

Federal Reserve Bank of New York
ABA = 021030004
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045
Field Tag 4200 of the Fedwire message should read:
"D 68010727 Environmental Protection Agency"

B. Respondent shall forward a copy of the check or documentation of a wire transfer to:

Tony R. Ellis, Case Development Officer
Waste and Chemical Enforcement Division (2249A)
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., NW (Room No. 5041-A)
Washington, DC 20460
(202) 564-4167 Fax (202) 564-0035

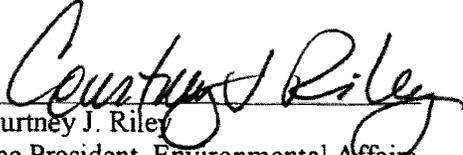
C. If Respondent fails to make the payment in a timely manner as required by paragraph 36.A., then Respondent shall pay a stipulated penalty of One Thousand Dollars (\$1,000.00) per calendar day for every day the penalty payment is late, unless EPA in writing excuses or mitigates the stipulated penalty. EPA may excuse or mitigate the stipulated penalty if EPA determines that the failure to comply occurred despite Respondent's exercise of good faith and due diligence.

V. OTHER MATTERS

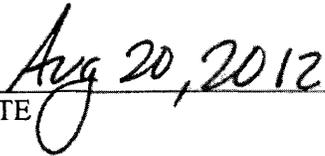
37. The undersigned representative of each Party certifies that he or she is duly authorized by his or her respective Party to sign and consent to this Agreement.
38. This Consent Agreement shall take full effect upon signing and filing of the Final Order by EPA's Environmental Appeals Board and shall be binding upon the Parties, and their respective officers, directors, employees, successors and assigns.
39. Respondent's obligations under this Consent Agreement shall end when it has paid in full the scheduled civil penalty, paid any stipulated penalties, and submitted documentation required by the Consent Agreement and Final Order.
40. All of the terms and conditions of this Consent Agreement together comprise one settlement agreement, and each of the terms and conditions is in consideration for all of the other terms and conditions. This Consent Agreement shall be null and void if any term or condition of this Consent Agreement is held invalid or is not executed by all of the signatory parties in identical form, or is not approved in such identical form by the EPA Environmental Appeals Board.
41. The penalty, including any stipulated penalties specified above, represents civil penalties assessed by EPA, and shall not be deductible for purposes of federal taxes.
42. Failure of Respondent to remit the civil penalties provided herein will result in this matter being forwarded to the United States Department of Justice for collection of the amount due, plus stipulated penalties and interest at the statutory judgment rate provided in 28 U.S.C. § 1961.
43. The Parties agree to bear their own costs.

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of Titanium Metals Corporation, Docket No. TSCA-HQ-2012-5019.

For Respondent:



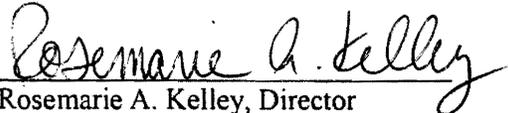
Courtney J. Riley
Vice President, Environmental Affairs
Titanium Metals Corporation
5430 LBJ Freeway, Suite 1700
Dallas, TX 75240



DATE

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of Titanium Metals Corporation, Docket No. TSCA-HQ-2012-5019.

For Complainant:



Rosemarie A. Kelley, Director
Waste and Chemical Enforcement Division
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
United States Environmental Protection Agency

8/31/12
DATE