

**BEFORE THE**  
**OHIO ENVIRONMENTAL PROTECTION AGENCY**

In the Matter of:

Eramet Marietta, Inc.	:	<u>Director's Final Findings</u>
State Route 7 South	:	<u>and Orders</u>
P.O. Box 299	:	
Marietta, Ohio 45750-0299	:	

**PREAMBLE**

It is agreed by the parties hereto as follows:

**I. JURISDICTION**

These Director's Final Findings and Orders ("Orders") are issued to Eramet Marietta, Inc. ("Respondent") pursuant to the authority vested in the Director of the Ohio Environmental Protection Agency ("Ohio EPA") under Ohio Revised Code ("ORC") §§ 3704.03 and 3745.01.

**II. PARTIES BOUND**

These Orders shall apply to and be binding upon Respondent and successors in interest liable under Ohio law. No change in ownership of the Respondent or of the facility (as hereinafter identified) shall in any way alter Respondent's obligations under these Orders.

**III. DEFINITIONS**

Unless otherwise stated, all terms used in these Orders shall have the same meaning as defined in ORC Chapter 3704 and the rules promulgated thereunder.

**IV. FINDINGS**

The Director of Ohio EPA has determined the following findings:

1. Respondent produces ferromanganese using submerged electric arc furnaces, which include the operations of charging, melting, refining, tapping, and casting and using crushing and sizing equipment at its facility located at State Route 7 South, Marietta, Washington County, Ohio. This facility is a Title V source, as defined in Ohio Administrative Code ("OAC") Rule 3745-77-01(LL) and is subject to the requirements of ORC Chapter 3704 and OAC Chapter 3745-77. At this facility, Respondent operates Electric Arc Furnace #1 (hereinafter "emissions unit P901"). Emissions unit P901 was installed and began operation in June 1968.

2. Emissions unit P901 is an "air contaminant source" as defined in OAC Rules 3745-15-01(C) and (W), 3745-31-01(I), and 3745-35-01(B)(1), and ORC § 3704.01(C).

3. Respondent was issued a Title V permit on December 18, 2002 pursuant to OAC Chapter 3745-77. As required by its Title V permit, Respondent must demonstrate compliance with its particulate emission limitation for this furnace by performing emission tests annually.

4. ORC § 3704.05(A) prohibits any person from allowing any emission from any source in excess of that permitted in any rule adopted by the Director of Ohio EPA. ORC § 3704.05(G) prohibits any person from violating any rule adopted by the Director of Ohio EPA. ORC § 3704.05(J)(2) prohibits the violation of any term and condition of a Title V permit.

5. By a letter dated July 9, 2003, Respondent informed Ohio EPA, Southeast District Office ("SEDO") that it conducted the emission tests for emissions unit P901 on June 12, 2003. In this letter, Respondent revealed to SEDO that the test results (i.e., 39.14 pounds per hour) indicated noncompliance with the particulate emission limitation (i.e., 35.9 pounds per hour) that was specified in its Title V permit. The limit of 35.9 pounds per hour was based on the particulate emission limitations specified by 40 CFR Part 63, Subpart XXX. Also, Respondent included an analysis of the noncompliance problem and a plan for correcting it.

6. On July 10, 2003, Respondent submitted to SEDO the test report for the emission tests that were conducted on June 12, 2003. The report confirmed the particulate emission limitation violation that was revealed in Respondent's July 9, 2003 letter.

7. On August 29, the United States Environmental Protection Agency, Region 5 ("USEPA") issued a Finding of Violation ("FOV") to Respondent for not complying with the particulate emission limitation based on the June 12, 2003 emission tests.

8. On September 3, 2003, Respondent submitted to SEDO the report for the emission tests performed for emissions unit P901 on August 12, 2003. The test results indicated that emissions unit P901 was in compliance with the particulate emission limitation.

9. By a letter dated September 8, 2003, SEDO sent Respondent a Notice of Violation citing the particulate emission violation during the June 12, 2003 test.

10. By a letter dated September 17, 2003, Respondent replied to the USEPA's August 29, 2003 FOV. In this response, Respondent explained the corrective actions including the installation of new bags in the baghouse. Respondent also informed USEPA of the compliant retest that was conducted on August 12, 2003.

11. Since Respondent failed to comply with the particulate emission limitation

during the June 12, 2003 emission testing of emissions unit P901, Respondent was in violation of the special terms and conditions of its Title V permit and ORC § 3704.05(A), (G) and (J)(2).

12. The Director has given consideration to, and based his determination on, evidence relating to the technical feasibility and economic reasonableness of complying with the following Orders and their relation to benefits to the people of the State to be derived from such compliance.

### **V. ORDERS**

The Director hereby issues the following Orders:

1. Respondent shall pay the amount of thirteen thousand two hundred dollars (\$13,200) in settlement of Ohio EPA's claim for civil penalties, which may be assessed pursuant to ORC § 3704.06. Within thirty (30) days after the effective date of these Orders, payment to Ohio EPA shall be made by an official check made payable to "Treasurer, State of Ohio" for ten thousand five hundred and sixty dollars (\$10,560) of the total amount. The official check shall be submitted to Brenda Case, or her successor, together with a letter identifying the Respondent, to:

Ohio EPA  
Office of Fiscal Administration  
P.O. Box 1049  
Columbus, Ohio 43216-1049

2. In lieu of paying the remaining two thousand six hundred and forty dollars (\$2,640) of civil penalty, Respondent shall within thirty (30) days of the effective date of these Orders, fund a Supplemental Environmental Project (SEP) by making a contribution in the amount of \$2,640 to the Ohio EPA's Clean Diesel School Bus Fund (Fund 5 CD). Respondent shall tender an official check made payable to "Treasurer, State of Ohio" for \$2,640. The official check shall be submitted to Brenda Case, or her successor, together with a letter identifying the Respondent, to:

Ohio EPA  
Office of Fiscal Administration  
P.O. Box 1049  
Columbus, Ohio 43216-1049

3. A copy of each of the above checks shall be sent to James A. Orlemann, Assistant Chief, SIP Development and Enforcement, or his successor, at the following address:

Ohio EPA  
Division of Air Pollution Control  
P.O. Box 1049  
Columbus, Ohio 43216-1049

4. Should Respondent fail to fund the SEP within the required time frame in Order 2, Respondent shall immediately pay to Ohio EPA \$2,640 of the civil penalty in accordance with the procedures in Order 1.

#### **VI. TERMINATION**

Respondent's obligations under these Orders shall terminate upon Ohio EPA's receipt of the official checks required by Section V of these Orders.

#### **VII. OTHER CLAIMS**

Nothing in these Orders shall constitute or be construed as a release from any claim, cause of action of demand in law or equity against any person, firm, partnership or corporation, not a party to these Orders, for any liability arising from, or related to, the operation of Respondent's facility.

#### **VIII. OTHER APPLICABLE LAWS**

All actions required to be taken pursuant to these Orders shall be undertaken in accordance with the requirements of all applicable local, state and federal laws and regulations. These Orders do not waive or compromise the applicability and enforcement of any other statutes or regulations applicable to Respondent.

#### **IX. MODIFICATIONS**

These Orders may be modified by agreement of the parties hereto. Modifications shall be in writing and shall be effective on the date entered in the journal of the Director of Ohio EPA.

#### **X. NOTICE**

All documents required to be submitted by Respondent pursuant to these Orders shall be addressed to:

Ohio EPA, Southeast District Office  
2195 Front Street  
Logan, Ohio 43138  
Attention: Bruce Weinberg

and to:

Ohio Environmental Protection Agency  
Lazarus Government Center  
Division of Air Pollution Control  
P.O. Box 1049  
Columbus, Ohio 43216-1049  
Attention: Thomas Kalman, Manager, Enforcement Section

or to such persons and addresses as may hereafter be otherwise specified in writing by Ohio EPA.

#### **XI. RESERVATION OF RIGHTS**

Ohio EPA and Respondent each reserve all rights, privileges and causes of action, except as specially waived in Section XII of these Orders.

#### **XII. WAIVER**

In order to resolve disputed claims, without admission of fact, violation or liability, and in lieu of further enforcement action by Ohio EPA for only the violations specifically cited in these Orders, Respondent consents to the issuance of these Orders and agrees to comply with these Orders. Compliance with these Orders shall be a full accord and satisfaction for Respondent's liability for the violations specifically cited herein.

Respondent hereby waives the right to appeal the issuance, terms and conditions, and service of these Orders, and Respondent hereby waives any and all rights Respondent may have to seek administrative or judicial review of these Orders either in law or equity.

Notwithstanding the preceding, Ohio EPA and Respondent agree that if these Orders are appealed by any other party to the Environmental Review Appeals Commission, or any court, Respondent retains the right to intervene and participate in such appeal. In such an event, Respondent shall continue to comply with these Orders notwithstanding such appeal and intervention unless said Orders are stayed, vacated, or modified.

#### **XIII. EFFECTIVE DATE**

The effective date of these Orders is the date these Orders are entered into the Ohio

EPA Director's journal.

**XIV. SIGNATORY AUTHORITY**

Each undersigned representative of a party to these Orders certifies that he or she is fully authorized to enter into these Orders and to legally bind such party to these Orders.

**IT IS SO ORDERED AND AGREED:**

Ohio Environmental Protection Agency

\_\_\_\_\_  
Joseph P. Koncelik  
Director

\_\_\_\_\_  
Date

**IT IS SO AGREED:**

Eramet Marietta, Inc.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed or Typed Name

\_\_\_\_\_  
Title

