

OHIO E.P.A.

OCT - 7 2009

BEFORE THE OHIO

ENVIRONMENTAL PROTECTION AGENCY

ENTERED DIRECTOR'S JOURNAL

In the Matter of: :
:
Eramet Marietta, Inc. :
State Route 7, Riverview Rd. :
Marietta, Ohio 45750 :

Directors Final Findings
and Orders

PREAMBLE

I certify this to be a true and accurate copy of the official documents as filed in the records of the Ohio Environmental Protection Agency.

It is agreed by the parties hereto as follows:

I. JURISDICTION

By: [Signature] Date: 10-7-09

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) 3753.01 and 3753.08.

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 identified below 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 3753 and the rules promulgated thereunder.

IV. FINDINGS

Nothing in these Orders shall be considered to be an admission by Respondent of any matter of law or fact. The Director of Ohio EPA makes the following findings:

1. Respondent owns and operates a facility that produces manganese and special metal products that are used by the steel, aluminum, superalloys, and specialty steel industries. The facility is located at State Route 7 in Marietta, Ohio. The facility is a stationary source within the meaning of OAC Rule 3745-104-01(B)(38). The facility previously operated tanks that contained up to 76,000 lbs of sulfur dioxide and 93,000 lbs of anhydrous ammonia, respectively. Respondent stored more than threshold quantities of regulated substances, namely sulfur dioxide and anhydrous ammonia, as defined in ORC 3745-104-01. The RMP threshold amount for sulfur dioxide is 5,000 lbs, and the threshold amount for anhydrous ammonia is 10,000 lbs. The processes for which these regulated substances were present are

covered processes within the meaning of OAC Rule 3745-104-01(B)(11). The covered processes at Respondent's facility were subject to Program 3 because the chemicals, sulfur dioxide and ammonia are subject to OSHA Process Safety Management and the worst case scenario has population within the distance to the endpoint.

2. Pursuant to Ohio Administrative Code (OAC) Rule 3745-104-05, an owner or operator of a stationary source that has more than a threshold quantity of a regulated substance in a process, as determined by OAC Chapter 3745-104 shall submit a Risk Management Plan (RMP) no later than June 21, 1999. Respondent submitted a RMP in 1999 as required.
3. On October 30, 2002, Ohio EPA, Division of Air Pollution Control (DAPC) inspectors conducted an audit at Respondent's facility and discovered three rule violations. No penalty was assessed, and Respondent corrected the violations after Ohio EPA gave Respondent notice of the violations.
4. On September 26, 2007, the Ohio EPA conducted a second audit at Respondent's facility and discovered twelve violations of the rules. The violations were as follows:
 - (a) Respondent failed to provide a management system, in violation of OAC Rule 3745-104-07.
 - (b) Respondent failed to maintain records for the hazard assessments, in violation of OAC Rule 3745-104-15.
 - (c) Respondent failed to report an incident in the RMP, in violation of OAC Rule 3745-104-16.
 - (d) Respondent failed to include all of the process safety information, in violation of OAC Rules 3745-104-24(C)(1)(c), (D)(1)(c), (D)(1)(d), (D)(1)(e), and (D)(1)(h).
 - (e) Respondent failed to include stationary source siting and address the recommendations in the process hazard analysis, in violation of OAC Rules 3745-104-25(C)(5) and (E).
 - (f) Respondent failed to annually certify the standard operating procedures, in violation of OAC Rule 3745-104-26(C).
 - (g) Respondent failed to provide refresher training pertaining to the standard operating procedures at least every three years, in violation of OAC Rule 3745-104-27(B).
 - (h) Respondent failed to establish and implement written procedures for

the ongoing integrity of the process equipment, in violation of OAC Rule 3745-101-28.

- (i) Respondent failed to present a compliance audit, and failed to conduct a compliance audit at least every three years, in violation of OAC Rule 3745-104-31. (This is a repeat violation.)
- (j) Respondent failed to evaluate contractors, in violation of OAC Rule 3745-104-35(B)(5).
- (k) Respondent failed to implement an emergency response plan, in violation of OAC Rule 3745-104-36(B)(3).
- (l) Respondent failed to maintain records pertaining to the management of change, in violation to OAC Rule 3745-104-50.

5. Violations referenced in subparagraphs (e) and (i) of this Finding are repeats of violations cited in the 2002 audit.
6. On November 13, 2007, the Ohio EPA sent Respondent a deficiency letter (dated October 31, 2007) requiring the violations to be corrected and documentation submitted within thirty days of receipt of the letter.
7. On December 19, 2007, Respondent submitted documentation pertaining to the violations. Based on the response, Ohio EPA determined that Respondent fully remedied violations (a), (c), (d), (f), (i), (j), (k) and (l) of Finding 7, but did not remedy violations (b), (e), (g) and (h).
8. ORC § 3753.06 prohibits violations of provisions of ORC Chapter 3753 or any rule adopted or issued under it. As of at least September 26, 2007 (the second compliance audit), Respondent has violated rules adopted under ORC Chapter 3753, specifically the Rules cited in Finding 7.
9. The Director has given consideration to, and based on his determination on, evidence relating to the technical feasibility and economic reasonableness of complying with the following Orders and benefits to the people of the State to be derived from such compliance.

V. ORDERS

The Director hereby issues the following Orders:

1. Within thirty (30) days after the effective date of these Orders, Respondent shall submit the following to the Ohio EPA:
 - a. A copy of the schedule for inspecting and testing the mechanical integrity of the ammonia and sulfur dioxide process equipment (tanks, piping, valves safety equipment, etc.).
 - b. Verification documentation showing that Respondent has de-registered each of the covered processes, identified in Finding 1 of these Orders, that were previously operated at the facility

2. Pursuant to ORC § 3753.09, Respondent is assessed a civil penalty in the amount of thirty thousand dollars (\$30,000) in settlement of Ohio EPA's claim for civil penalties. Within fourteen (14) days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of twenty-four thousand dollars (\$24,000) in settlement of Ohio EPA's claims for civil penalties, which shall be deposited into the Risk Management Plan fund established pursuant to ORC § 3753.05. Payment shall be made by an official check made payable to Treasurer, State of Ohio for \$24,000. The official check shall be submitted to Ohio EPA, Office of Fiscal Administration, attention Brenda Case, P.O. Box 1049, Columbus, Ohio 43216-1049, together with a letter identifying the Respondent and the facility.

3. In lieu of paying the remaining six thousand dollars (\$6,000) of the civil penalty, Respondent shall fund a Supplemental Environmental Project (SEP) by making a contribution in the amount of \$6,000 to the Ohio EPA's fund for the Clean Diesel School Bus Program (Fund 5CD0). Respondent shall make payment within thirty (30) days after the effective date of these Orders by tendering an official check made payable to Treasurer, State of Ohio for \$6,000. The official check shall be submitted to Brenda Case, together with a letter identifying the Respondent, the facility, and Fund 5CD0, to the above-stated address.

4. 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

5. Should Respondent fail to fund the SEP within the require time frame set forth in Order 2, Respondent shall immediately pay to Ohio EPA \$6,000 of the civil penalty in accordance with the procedures in Order 2.

VI. TERMINATION

Respondent's obligations under these Orders shall terminate when Respondent certifies in writing and demonstrates to the satisfaction of Ohio EPA that Respondent has performed all obligations under these Orders and the Chief of Ohio EPA's Division of Air Pollution Control acknowledges, in writing, the termination of these Orders. If Ohio EPA does not agree that all obligations have been performed, then Ohio EPA will notify Respondent of the obligations that have not been performed, in which case Respondent shall have an opportunity to address any such deficiencies and seek termination as described above.

This certification shall contain the following attestation: I certify that the information contained in or accompanying this certification is true, accurate and complete.

This certification shall be submitted by Respondent to Ohio EPA and shall be signed by a responsible official of Respondent. For purposes of these Orders, a responsible official is a facility official who is in charge of a principal business function of Respondent.

VII. OTHER CLAIMS

Nothing in these Orders shall constitute or be construed as a release from any claim, cause of action or 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 the 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:

Kimberly Joseph
Ohio Environmental Protection Agency
DAPC
P.O. Box 1049
Columbus, Ohio 43216-1049

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 specifically 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 and event, Respondent shall continue to comply with these Orders notwithstanding such appeal and intervention unless these 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



Chris Korleski
Director

10/5/09
Date

IT IS SO AGREED:

Eramet Marietta, Inc



Signature

09/28/09
Date

Frank Bjorklund

Printed or Typed Name

Chief Executive Officer
Title