

IN THE COURT OF COMMON PLEAS
TUSCARAWAS COUNTY, OHIO

FILED
CLERK OF COURTS

STATE OF OHIO, ex rel. : CASE NO. 87-CV-120412
ANTHONY J. CELEBREZZE, JR. :
ATTORNEY GENERAL OF OHIO : JUDGE HARLAN SPIES

Plaintiff, :
CLERK OF COURTS

vs. :

BARMET ALUMINUM CORP., et al., : CONSENT ORDER

Defendants. :

The Plaintiff, State of Ohio, by its Attorney General, Anthony J. Celebrezze, Jr., having filed an Amended Complaint seeking injunctive relief and civil penalties against the Defendants in this matter for alleged violations of Ohio Revised Code Chapter 6111 and the rules adopted thereunder. With regard to these issues the parties have agreed on the terms of permanent injunctive relief.

THEREFORE, without trial of any issue of law or fact, and upon consent of the parties hereto, it is hereby ORDERED, ADJUDGED AND DECREED as follows:

I. JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter herein pursuant to Chapter 6111 of the Ohio Revised Code (R.C.) and the rules and regulations adopted thereunder. The Court has jurisdiction over the parties hereto. Venue is proper in this Court.

II. PERSONS BOUND

2. The parties agree that Defendant Barmet Aluminum Corporation is a person as defined in R. C. Section 6111.01(I).

3. The Amended Complaint is dismissed without prejudice as to the individual defendants, Jacob Pollock, Richard Pollock, Stanley Platek, and David Mahaffey.

4. The provisions of this Consent Order shall apply to and be binding upon the parties to this order, their agents, officers, employees, assigns and successors in interest and those acting on behalf of or for any of the parties.

5. The Defendant shall provide a copy of this Consent Order to each contractor it employs to perform the work itemized herein, and each general contractor shall provide a copy of this Consent Order to each of its subcontractors for such work.

III. CONTINUING JURISDICTION

6. This Court shall retain jurisdiction of this action for the purpose of making any order or decree which it may deem necessary to carry out the Consent Order.

IV. DEFINITIONS

7. For the purposes of this Consent Order, the following terms shall have the following definitions:

A.) BARMET: The Barmet Aluminum Corporation, incorporated under the laws of Ohio, whose main office is located in Akron, Ohio and any of its directors, officers, agents, employees or servants.

B.) UHRICHSVILLE RECYCLING DIVISION: The aluminum smelting plant owned and operated by the Barmet Aluminum Corporation, doing business as the Uhrichsville Recycling Division, located on the west side of Tuscarawas County Rd. 28 in Uhrichsville, Tuscarawas County, Ohio.

D.) NEWPORT ROLLING MILL DIVISION: The Barmet Aluminum Corporation's Rolling Mill, doing business as Newport Rolling Mill, located on the east side of Tuscarawas County Road 28 in Uhrichsville, Tuscarawas County, Ohio.

E.) OEPA: Ohio Environmental Protection Agency, its director, employees and agents.

F.) NPDES PERMIT: An Ohio National Pollution Discharge Elimination System permit as that term is used in Revised Code Chapter 6111 and Ohio Administrative Code (OAC) Chapter 3745-33.

G.) PTI: A Permit to Install issued by OEPA pursuant to OAC Chapter 3745-31.

V. CLAIMS RESOLVED

8. Compliance with the terms of this Consent Order shall constitute full satisfaction of any civil or administrative liability of Defendant and its officers, agents, and employees, to the State of Ohio for the claims alleged in the State's Amended Complaint.

9. Defendant neither admits nor denies any of the allegations in the State's Amended Complaint. The negotiating and signing of this Consent Order, and the attachments hereto is not intended to be, nor shall it be, an admission of fact or law.

10. This Consent Order shall not be construed to limit the authority of the State of Ohio to seek relief for claims or conditions not alleged in the Amended Complaint or addressed by

this Consent Order, nor shall this Consent Order bar the State of Ohio from bringing any action against the Defendant for any violations which occur after this Order is entered into.

11. Nothing in this Consent Order shall be construed to relieve the parties of their rights and obligations to comply with applicable federal, state or local statutes, regulations or ordinances, nor shall this Order constitute a waiver or release of any right, remedy, defense or claim against Defendant with regard to any person not a party to this Consent Order.

VI. PERMANENT INJUNCTION

12. Defendant is immediately and permanently enjoined to operate the Uhrichsville Recycling Division and the Newport Rolling Mill in compliance with R.C. 6111.04 and 6111.07, and with OAC 3745-31-02. Defendant is enjoined to fully comply with the terms and conditions of any NPDES Permit issued to it by the director and any renewals or modifications thereof, except as to any final effluent limitations of any such permit as set forth in Section VIII herein. Defendant is enjoined to fully comply with the terms and conditions of any Permits to Install issued to it.

VII. PERMIT REQUIREMENTS

13. Defendant is immediately and permanently enjoined to apply for and obtain from OEPA an NPDES permit for all discharges from the Uhrichsville Recycling Division and the Newport Rolling

Mill into waters of the state. Defendant is enjoined to re-apply for NPDES permits as required by the Ohio Revised Code and the Ohio Administrative Code. Defendant has submitted to the OEPA, NPDES applications which are attached hereto as Exhibits A (Newport Rolling Mill), and B (Uhrichsville Recycling Plant).

14. Defendant is enjoined from discharging any sewage, industrial waste and/or other wastes into waters of the State without an NPDES Permit issued by OEPA, except as authorized by Section VIII of this Order.

15. Defendant is enjoined to submit approvable Permit To Install applications. The PTI applications shall at least include the dike, sewers and any other wastewater treatment or disposal system proposed or required by this Order.

16. Defendant has submitted Permit To Install applications, which appear as Sections A, B, and C in Exhibit A and Sections A, B, C, and H in Exhibit B attached hereto. The OEPA has issued to defendant the approved PTI attached hereto as Exhibit C .

VIII. INTERIM COMPLIANCE

17. Between the effective date of this order and February 1, 1992, Defendant is enjoined to discharge from the Uhrichsville Recycling Division only during the conditions described in Exhibit 1 . Defendant is also enjoined to report all discharges and monitoring data pursuant to Exhibit 1 . After

February 1, 1992, Defendant is enjoined to fully comply with the final effluent limitations and any other terms and conditions of its then effective NPDES Permit. Exhibit 1 is not an NPDES Permit or a modification of a permit.

IX. GROUNDWATER INVESTIGATION WORKPLAN

18. Defendant is enjoined to conduct a hydrogeological survey of the groundwater underlying the Barmet facility.

19. Defendant is enjoined to submit an approvable Groundwater Investigation Workplan. The workplan shall be capable of evaluating the impact Barmet's activities have had on the groundwater. The workplan shall include, at a minimum, a proposed number of borings, proposed construction of monitoring wells, and a proposed schedule for implementing the workplan. At least one of the monitoring wells shall be placed upgradient of the Barmet Facility and shall be capable of showing natural background groundwater conditions. The number, placement and construction of the wells is subject to OEPA approval.

20. The workplan, once approved by OEPA, shall be incorporated into this order as if fully restated herein. Defendant is enjoined to implement the approved groundwater investigation workplan.

21. Defendant has submitted the Groundwater Investigation Workplan to the OEPA Southeast District Office, a copy of which is attached hereto as Exhibit D.

22. Within 30 days of receiving OEPA's approval of Barmet's workplan, Defendant will begin to implement the approved workplan. Within 30 days of receiving OEPA's disapproval of the workplan, Defendant shall resubmit the workplan to OEPA. The resubmittal shall address all of the deficiencies noted by OEPA.

23. In the event the Defendant disagrees with OEPA's disapproval, the Defendant shall notify OEPA within seven days, and the disagreement shall be subject to Dispute Resolution pursuant to Section XIII of this Order.

X. RECYCLING AND REMOVAL WORKPLAN

24. Defendant is enjoined to remove and/or recycle from the Barmet Facility all material piles on site, which are not protected from precipitation by a roofed structure and/or man-made liners, within eight years after the entry of this Consent Order, in accordance with all applicable laws.

25. Defendant has submitted the Recycling and Removal Workplan to the OEPA Southeast District Office, a copy of which is attached hereto as Exhibit E. The Recycling and Removal Workplan includes at least the following areas as delineated on the map set forth in Appendix III of said Exhibit E: material piles and the west drainage area. The Recycling and Removal Workplan shall at least include a schedule for the removal and/or recycling of the material piles and once the Plan is approved by OEPA, it shall become incorporated into this Consent Order as if

fully restated herein. Defendant is enjoined to follow the schedule in the approved Recycling and Removal Workplan.

26. Defendant shall document the removal required by the Recycling and Removal Workplan by sending monthly manifests to the Southeast District Office of OEPA.

27. Defendant is enjoined to handle any and all materials and/or wastes at the Barmet Facility in accordance with R. C. 6111.04, except as authorized by Section VIII herein.

28. Within 30 days of receiving OEPA's approval of Defendant's workplan, Defendant will begin to implement the approved workplan. Within 30 days of receiving OEPA's disapproval of the workplan, Defendant shall resubmit the workplan to OEPA. The resubmittal shall address all of the deficiencies noted by OEPA.

29. In the event the Defendant disagrees with OEPA's disapproval, the Defendant shall notify OEPA within ten days, and the disagreement shall be subject to Dispute Resolution pursuant to Section XIII of this Order.

XI. SAMPLING ANALYSIS PLAN

30. Defendant has submitted a Sampling Analysis Plan to the OEPA, Southeast District Office which is attached hereto as Exhibit F. The Sampling Analysis Plan is subject to OEPA approval. All analysis shall be performed utilizing methods approved by the OEPA. Defendant is enjoined to perform the sampling analysis in accordance with the approved Sampling

Analysis Plan. Within 30 days of receiving OEPA's disapproval of the Sampling Analysis Plan, Defendant shall resubmit the plan. The resubmittal shall address all of the deficiencies noted by the OEPA.

31. In the event the Defendant disagrees with the OEPA's disapproval, the Defendant shall notify OEPA within seven days, and the disagreement shall be subject to dispute resolution pursuant to Section XIII of this Order.

XII. PROJECT COORDINATORS

32. All documents, including reports and other correspondence to be submitted pursuant to this Consent Order, shall be sent to the Project Coordinators, as designated in paragraph 33.

33. The Defendant and OEPA shall each designate a Project Coordinator and an alternate Project Coordinator for the purpose of overseeing the implementation of this Consent Order. To the maximum extent possible, communications between the parties concerning the terms and conditions of this Consent Order shall be made between the Project Coordinators. The Project Coordinators are:

For Ohio EPA: Ryszard Lecznar, Group Leader, Enforcement and Compliance Section, Division of Water Pollution Control, southeast District Office, Logan, Ohio (and his successor).

Alternate: Dave Schuetz, Unit Supervisor, Division of Water Pollution Control, Southeast District Office, Logan, Ohio (and his successor).

For the Defendant: David Mahaffey, Barmet Aluminum Corp., P. O. Box 30, Uhrichsville, Ohio, 44683;

Alternate: Waheed Khan, Barmet Aluminum Corp., P. O. Box 26010, Akron, Ohio, 44319.

34. Each Project Coordinator will distribute communications from the other Project Coordinator to all appropriate persons. Each party shall have the right to change its Project Coordinator. Such a change shall be accomplished by notifying the other party in writing at least five days prior to the change.

35. OEPA's Project Coordinator, the alternate, or any designated representative of the Project Coordinator shall have the authority to take samples and/or direct the type, quantity and location of samples to be taken.

36. The Defendant's Project Coordinator or alternate shall be on-site or on call during all hours of work required by this Consent Order. The absence of either Project Coordinator from the work site shall not be cause for stoppage of work.

37. Defendant's Project Coordinator shall provide three days notice prior to performing any work required under this Order. Defendant's Project Coordinator may seek approval from OEPA's Project Coordinator as to any changes made in the implementation of approved workplans. If OEPA's Project

Coordinator approves the changes, then work shall proceed in accordance with the approved changes. If OEPA's Project Coordinator does not approve the changes, then the dispute may be resolved pursuant to Section XIII of this Order. All communication, as set forth in this paragraph, shall be in writing.

XIII. DISPUTE RESOLUTION

38. The submittal of documents, pursuant to Sections IX, X, and XI and the approval or disapproval of plans pursuant to Sections IX, X, and XI of this Consent Order are subject to Dispute Resolution as set forth in this section. Disputes which arise regarding implementation of approved Groundwater Investigation, Sampling Analysis and/or Recycling and Removal Workplans are also subject to Dispute Resolution. No other sections of this Order, or any other order and/or action of the Director is subject to dispute resolution as set forth in this section.

39. If Defendant seeks to invoke Dispute Resolution pursuant to this section, it shall first notify OEPA in writing of its objections, detailing its position, the basis therefore and its proposed resolution, within ten working days of receipt of notice of disapproval from OEPA.

After receipt by OEPA of the objections of Defendant, OEPA and the Defendant shall have an additional thirty working days to reach an agreement. The parties agree to use their best efforts

to informally and in good faith resolve all disputes or differences of opinion. This thirty day period may be extended upon mutual consent of the parties.

40. At the end of the thirty day period, OEPA will notify Defendant in writing as to OEPA's final decision. The dispute will be deemed to be resolved as set forth in OEPA's final decision letter. If Defendant chooses to pursue a review of the OEPA's decision, it may petition this Court for review within ten working days after the receipt of OEPA's final decision letter. Any letter sent to Defendants pursuant to this section is not a final action of the director.

41. In any action brought by the Defendant under this section this Court shall affirm the OEPA's position unless Defendant demonstrates to the Court by a preponderance of the evidence that OEPA has acted unreasonably.

42. If the Court does not decide the dispute within ninety days after the date of the filing of the Defendant's petition, Defendant shall implement, or continue work under, the disputed workplan, pursuant to OEPA's determination until such time as the Court rules otherwise.

Once the Defendant has petitioned this Court to resolve a dispute pursuant to this section, no stipulated penalties due to the State as a result of Defendant's alleged violation of the Consent Order need be paid. If the Court finds that the State's action, which is the basis of the dispute, was unreasonable, no stipulated penalties shall be due. If the Court affirms the State, all stipulated penalties due as a result of Defendant's

alleged violation of the Consent Order shall be paid within ten days of the Court's final determination and order.

XIV. POTENTIAL FORCE MAJEURE

43. Acceptance of this Consent Order without a force majeure clause does not constitute a waiver by Defendant of any rights or defenses it may have under applicable law. In any action to enforce any of the provisions of this Consent Order the Defendant may raise, at that time, the question of whether it is entitled to a defense that its conduct was caused by reasons beyond its control such as, by way of example and not limitation, acts of God, unusually severe weather conditions, strikes, acts of war or civil disturbances, or orders of any regulatory agency. While Plaintiff does not agree that such a defense exists, it is, however, hereby agreed upon by the parties that it is premature at this time to raise the existence of such a defense and that the appropriate point at which to determine the existence of such a defense is at the time such a defense is raised in the context of litigation relating to a violation of this Consent Order.

XV. CIVIL PENALTY

44. Defendant shall pay to the State of Ohio a civil penalty of One Hundred Ten Thousand Dollars (\$110,000.00) payable as follows:

1) Twenty Thousand Dollars (\$20,000.00) within thirty (30) days of the signing of this Agreement;

2) Fifteen Thousand Dollars (\$15,000.00) on or before each of the following dates: June 5, 1990; December 5, 1990; June 5, 1991; December 5, 1991; June 5, 1992; and December 5, 1992.

Each payment shall be made by delivering a certified check, made payable to the "Treasurer, State of Ohio", to Counsel for Plaintiff: Susan E. Ashbrook, Assistant Attorney General, 30 East Broad Street, 25th Floor, Columbus, OH 43266-0410.

XVI. STIPULATED PENALTIES

45. Defendant shall pay a stipulated penalty, for each day Defendant violates any paragraph of this Consent Order, in accordance with the following schedule:

- A. For violation days 1 through 10, \$750.00 per day;
- B. For violation days 11 through 20, \$1,500.00 per day;
- C. For violation days 20 through 80, \$3,000.00 per day;
- D. For violations over 80 days \$6,000.00 per day.

Any payment required to be made under the provisions of this paragraph shall be made by delivering to Plaintiff's counsel a certified check or checks for the appropriate amounts, within seven (7) days from the date of the failure to meet the

requirement of the Consent Order, made payable to "Treasurer, State of Ohio".

XVII. COURT COSTS

46. Defendants shall pay the court costs of this action.

12/1/89
DATE

APPROVED:

ANTHONY J. CELEBREZZE, JR.
ATTORNEY GENERAL OF OHIO

Susan E. Ashbrook
SUSAN E. ASHBROOK
CHRIS CONSTANTINI
Assisat Attorneys General
Environmental Enforcement
Section
30 East Broad Street, 17th Fl.
Columbus, OH 43266-0410
(614) 466-2766

S/HARLAN R. SPIES

JUDGE HARLAN SPIES
Tuscarawas County
Court of Common Pleas

Daniel T. Lehigh
DANIEL T. LEHIGH
Nanette M. Degarmo
NANETTE M. DEGARMO
Attorneys for Defendant,
Barmet Aluminum Corporation
152 N. Broadway
P. O. Box 541
New Philadelphia, Ohio 44663
(216) 364-4421

W. Robert Park
W. ROBERT PARK; Chief
Executive Officer and
President, Barmet Aluminum
Corporation
As Authorized Representative
and on Behalf of Defendant
Barmet Aluminum Corporation

EXHIBIT 1

1. Barmet may not discharge from the Uhrichsville Recycling Division Plant except as needed during wet weather.*

2. During any discharge events, Barmet must sample at the following locations:

- A. Northeast low lift pump station
- B. South overflow at low point in Dike
- C. County Garage Ditch
- D. In front of scales (Grate by County Road)
- E. South Running Ditch Plant By Salt Plant
- F. Any other point necessary to adequately characterize the discharge

3. Grab samples shall be taken at least three times per day while discharging. The first sample shall be taken within 30 minutes after start of the discharge, and the next two hours after the start of the discharge.

4. All sampling and testing shall be in accordance with USEPA rules 40 CFR 136, "Test-Procedures for Analysis of Pollutants."

* "Wet Weather" is defined as 1 1/2 inches of rain in a one hour period, or 3 inches of rain in a twenty-four hour period.

5. A report summarizing the results of each sample shall be submitted to OEPA, Southeast District Office, within 7 days after receipt of the results.

6. The following information shall be reported:

- a. Flow (in gallons per day)
- b. Duration of flow (in hours)
- c. Time of collection of each sample
- d. Flow rate (GPM at time of collection of each sample)
- e. Precipitation, measured and logged daily, as well as time of start and stop of precipitation.

7. The following parameters shall be analyzed:

- (1) T.S.S.
- (2) Oil and grease
- (3) pH
- (4) Chlorides
- (5) Ammonia
- (6) Total Aluminum
- (7) Total Zinc
- (8) Total Cadmium
- (9) Total Copper
- (10) Total Chromium
- (11) Total Lead

- (12) Total Nickel
- (13) Temperature
- (14) Total Dissolved Solids
- (15) Total Iron
- (16) Total Manganese

8. Defendant may request, at any time following the submission to OEPA of at least two (2) sample reports from any location set forth in paragraph 2 above, that further sampling be suspended at such location or locations.

If the OEPA, upon review of the data submitted relative to the location(s) in question, determines that further sampling is not necessary, the OEPA shall grant Defendant's request.