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WASHINGTON CO. OHIO

IN THE COURT OF COMMON PLEAS
WASHINGTON COUNTY, OHIO

STATE OF OHIO, ex rel.
MICHAEL DEWINE
OHIO ATTORNEY GENERAL

Plaintiff,

v.

ERAMET MARIETTA INC.

Defendant.

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: CASE NO. 100T000076
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: JUDGE LANE
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CONSENT ORDER AND FINAL JUDGMENT ENTRY

Plaintiff, State of Ohio, on relation of its Attorney General (“Plaintiff”), having filed the Complaint in this action against Eramet Marietta Inc., (hereinafter “Defendant”) to enforce Ohio’s hazardous waste laws found in Chapter 3734 of the Revised Code and the rules adopted thereunder; and Plaintiff and Defendant(s) having consented to the entry of this Order; and

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

I. DEFINITIONS

1. As used in this Consent Order:

A. “**Closure Plan**” means a closure plan that has been approved by the Director.

The approved closure plan may be a closure plan approved by the Director as

submitted by Defendant, or a closure plan approved by the Director after being submitted by Defendant and modified by the Director.

- B. **“Clean Closure”** means the owner or operator has, in closure, either:
1. Demonstrated to Ohio EPA’s satisfaction that suspected contaminants cannot be detected, cannot be detected above naturally occurring background levels, or cannot be detected above regulatory levels; or
 2. Through a risk assessment, demonstrated to Ohio EPA’s satisfaction that any remaining contamination is at levels low enough that it does not pose a threat to human health or the environment.
- C. **“Consent Order”** means this Consent Order and Final Judgment Entry.
- D. **“Defendant”** means Eramet Marietta Inc.
- E. **“Director”** means Ohio’s Director of Environmental Protection.
- F. **“Effective Date”** means the date the Washington County Court of Common Pleas enters this Consent Order.
- G. **“Hazardous Waste Management Unit”** means the alleged release area around the 834 Crystallizer in the ElChrome Department located at the Facility.
- H. **“Facility”** refers to Defendant’s facility located at State Route 7 South, Marietta, Washington County, Ohio.
- I. **“Ohio EPA”** means the Ohio Environmental Protection Agency.

- J. **“Plaintiff”** means the State of Ohio by and through the Ohio Attorney General.

II. JURISDICTION AND VENUE

2. This Court has jurisdiction over the subject matter of this injunction, pursuant to R.C. Chapter 3734 and the rules adopted thereunder. This Court has jurisdiction over the parties. Venue is proper in this Court. The Complaint states a claim upon which relief can be granted.

III. PERSONS BOUND

3. The provisions of this Consent Order shall apply to and be binding upon Defendant, its agents, officers, employees, assigns, successors in interest and any other person who would be bound pursuant to Rule 65(D) of the Ohio Rules of Civil Procedure, including any person acting in concert or participation with it. Defendant is ordered and enjoined to provide a copy of this Consent Order to any person they employ and/or contract with to perform work itemized herein.

IV. DEFENDANT’S NONADMISSION OF LIABILITY

4. This Consent Order is in settlement and compromise of disputed claims, and nothing in this Consent Order, including Defendant’s submission and implementation of the Closure Plan as required herein is to be construed as an admission of any facts or liability, which liability Defendant expressly denies. Without limitation of the foregoing, Defendant specifically denies that the alleged release area around the 834 Crystallizer in the ElChrome Department located at the Facility constitutes a hazardous waste management unit or is subject to hazardous waste closure requirements.

V. SATISFACTION OF LAWSUIT AND RESERVATION OF RIGHTS

5. Except as otherwise provided in this Consent Order, compliance with the terms of this Consent Order shall constitute full satisfaction of any civil liability of Defendant to Plaintiff for all claims alleged in the Complaint.

6. Nothing in this Consent Order, including the imposition of stipulated civil penalties, shall limit the authority of the State of Ohio to:

- A. Seek relief for claims or conditions not alleged in the Complaint;
- B. Seek relief for claims or conditions alleged in the Complaint that occur after the entry of this Consent Order;
- C. Enforce this Consent Order through a contempt action or otherwise for violations of this Consent Order;
- D. Bring any action against Defendant or against any other person, under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), as amended, 42 U.S.C. §9601, et seq. and/or Revised Code 3734.20 through 3734.27 to: (1) recover natural resource damages, and/or (2) order the performance of, and/or recover costs for any removal, remedial or corrective activities not conducted pursuant to the terms of this Consent Order; or
- E. Take any action authorized by law against any person, including Defendant, to eliminate or mitigate conditions at the Facility that may present an imminent threat to the public health or welfare, or the environment.

7. Nothing in this Consent Order shall constitute or be construed as satisfaction of civil liability, a covenant not to sue, and/or a release regarding the claims alleged in the

Complaint, against any person, firm, trust, joint venture, partnership, corporation, association, or other entity not a signatory to this Consent Order.

8. Nothing in this Consent Order shall be construed to limit the statutory authority of the Director or his authorized representatives to enter at reasonable times upon any private or public property, real or personal, to inspect or investigate, obtain samples and examine or copy any records to determine compliance with R.C. Chapter 3734.

9. Nothing in this Consent Order shall be construed to relieve the Defendant of its obligations to comply with applicable federal, state, or local statutes, regulations, or ordinances.

10. Nothing herein shall restrict the right of the Defendant to raise any administrative, legal or equitable claim or defense with respect to such further actions reserved by the State in this Section. However, Defendant shall not assert and may not maintain, any defense or claim based upon the principles of waiver, *res judicata*, collateral estoppel, issue preclusion, claim splitting or other defenses based upon any contention that the claims raised by the State in the subsequent proceeding were, could, or should have been brought in the instant case.

VI. CLOSURE OF HAZARDOUS WASTE MANAGEMENT UNIT

11. Upon the Effective Date, Defendant is ordered and enjoined to comply with the requirements of Ohio Adm. Code 3745-55-10 through Ohio Adm. Code 3745-55-20 in closing the Hazardous Waste Management Unit at the Facility. This Hazardous Waste Management Unit shall be closed in a manner that minimizes the need for further maintenance and controls, and that minimizes or eliminates, to the extent necessary to prevent threats to human health and the environment, post-closure escape of hazardous waste, hazardous constituents, leachate, contaminated run-off, or hazardous waste decomposition products to the ground or surface

waters or to the atmosphere, and complies with the closure requirements of Ohio Adm. Code 3745-55-10 through 3745-55-20.

12. Within thirty (30) days of the Effective Date, Defendant is ordered and enjoined to submit to Ohio EPA, at the addresses set forth in Section VII of this Consent Order, a Closure Plan in accordance with Ohio Adm. Code 3745-55-10 through 3745-55-20 for the Hazardous Waste Management Unit at the Facility.

A. After public notice of the Closure Plan pursuant to Ohio Adm. Code 3745-66-12(D)(4), if Ohio EPA determines that the Closure Plan is deficient and gives Defendant written notice of such deficiencies in the Closure Plan, Defendant is ordered and enjoined to submit to Ohio EPA a revised Closure Plan within thirty (30) days of receipt of the notice of deficiencies.

B. Following review of the revised plan, if Ohio EPA determines that the revised Closure Plan is deficient, Ohio EPA may modify the plan and approve the revised plan as modified by Ohio EPA.

C. Immediately upon receipt of notice of approval by Ohio EPA of the Closure Plan, either as originally submitted, as revised, or as revised and modified, Defendant is ordered and enjoined to implement the approved Closure Plan in the manner and time frames set forth in the approved Closure Plan.

13. Defendant is ordered and enjoined to amend the approved Closure Plan pursuant to Ohio Adm. Code 3745-55-12 whenever:

A. Changes in operating plans or design affect the Closure Plan; or

B. There is a change in the expected year of closure, if applicable; or

C. In conducting partial or final closure activities, unexpected events require a modification of the Closure Plan;

14. If Defendant is required to submit an amended Closure Plan to Ohio EPA, the Closure Plan shall be amended in accordance with Ohio Adm. Code 3745-55-12(C). Ohio EPA will approve, revise, or revise and modify the Amended Closure Plan as set forth in Paragraph 12, and Defendant shall implement the approved amended Closure Plan as set forth in Paragraph 12.

15. Within sixty (60) days after completion of closure, Defendant is ordered and enjoined to submit certification of closure to Ohio EPA, pursuant to Ohio Adm. Code 3745-55-15 and a survey plat, pursuant to Ohio Adm. Code 3745-55-16 (if necessary).

16. The Closure Plan developed for the Facility shall be enforceable under this Consent Order as though fully incorporated herein.

17. Nothing in this Section shall limit Defendant's or any other entity's rights to appeal any final action of the Director regarding approval, denial or approval with conditions of the Closure Plan to the Environmental Review Appeals Commission.

VII. SUBMITTAL OF DOCUMENTS

18. All documents required to be submitted to Ohio EPA pursuant to this Consent Order shall be submitted to the following addresses, or to such addresses as Ohio EPA may hereafter designate in writing:

Ohio EPA
Division of Materials and Waste Management
50 W. Town St., Suite 700
Columbus, OH 43215
Attn: Manager, Compliance Assurance Section

Ohio EPA
Southeast District Office
2195 Front Street
Logan, Ohio 43138
Attn: DMWM Manager

VIII. COMPLIANCE WITH APPLICABLE LAWS, PERMITS AND APPROVALS

19. All activities undertaken by Defendant pursuant to this Consent Order shall be undertaken in accordance with the requirements of all applicable federal, state and local laws, rules, regulations and permits or other ordinances. Defendant shall submit timely applications and requests for any such permits and approvals. Where such laws appear to conflict with the other requirements of this Consent Order, Defendant is ordered and enjoined to immediately notify Ohio EPA of the potential conflict. Defendant is ordered and enjoined to include in all contracts or subcontracts entered into for work required under this Consent Order, provisions stating that such contractors or subcontractors, including their agents and employees, shall perform all activities required by such contracts or subcontracts in compliance with all applicable laws and rules. This Consent Order is not a permit issued pursuant to any federal, state or local law or rule.

IX. CIVIL PENALTY

20. Defendant is ordered and enjoined to pay to the State of Ohio a total civil penalty in the amount of Seventy-Five Thousand Dollars (\$75,000.00). The civil penalty required to be paid under this Consent Order shall be paid by delivering to Plaintiff, c/o Martha Sexton, Paralegal, or her successor at the Office of the Attorney General of Ohio, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215, a cashier's or certified check in that amount payable to the order of "Treasurer, State of Ohio" within 30 days and shall include a reference to "A.G. EAGO No. 391915." This civil penalty shall be deposited into the Hazardous Waste Clean-up Fund created by R.C. 3734.28.

X. STIPULATED PENALTIES

21. In the event that Defendant fails to comply with any requirement or deadline contained in this Consent Order, or any requirement or deadline contained in any document approved in accordance with this Consent Order, the Defendant is liable for and shall pay stipulated penalties in accordance with the following schedule for each failure to comply:

A. The first time Defendant violates the terms or conditions of this Consent Order, Defendant shall be liable for One Thousand, Five Hundred Dollars (\$1,500.00) for each day of each violation.

B. The next time Defendant violates the terms or conditions of this Consent Order, Defendant shall be liable for Two Thousand, Seven Hundred and Fifty Dollars (\$2,750.00) for each day of each violation.

C. For every occurrence that Defendant violates the terms or conditions of this Consent Order following the second violation, Defendant shall be liable for Five Thousand Dollars (\$5,000.00) for each day of each violation.

22. Any payment required to be made under the provisions of this Section of the Consent Order shall be made by delivering to Plaintiff, c/o Martha Sexton, Paralegal, or her successor, Office of the Attorney General of Ohio, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215, a cashier's or certified check made payable to the order of "Treasurer, State of Ohio," for the appropriate amount within thirty (30) days from the date of the violation of the terms and conditions of this Consent Order. The payment of the stipulated penalty shall be accompanied by a letter briefly describing the type of violation, deadline or requirement not met and the date upon which the violation occurred. The memo

portion of the check, or some other prominent location on the transmittal letter or documentation, shall include a reference to "A.G. EAGO No. 391915."

23. The requirement to pay any stipulated penalty as set forth herein is self-executing upon any violation of the terms and conditions of this Consent Order by Defendant. No further demand need be made by Plaintiff.

24. The payment of stipulated penalties by Defendant and the acceptance of such stipulated penalties by Plaintiff pursuant to this Section shall not be construed to limit Plaintiff's authority to seek additional relief pursuant to R.C. Chapter 3734, including civil penalties under R.C. 3734.13, or to otherwise seek judicial enforcement of this Consent Order, for the same violation for which a stipulated penalty was paid or for other violations.

XI. RETENTION OF JURISDICTION

25. This Court shall retain jurisdiction of this action for the purpose of enforcing this Consent Order or in resolving any conflicts concerning the interpretation of this Consent Order.

XII. COSTS

26. Defendant shall pay the court costs of this action.

XIII. ENTRY OF CONSENT ORDER AND JUDGMENT BY CLERK

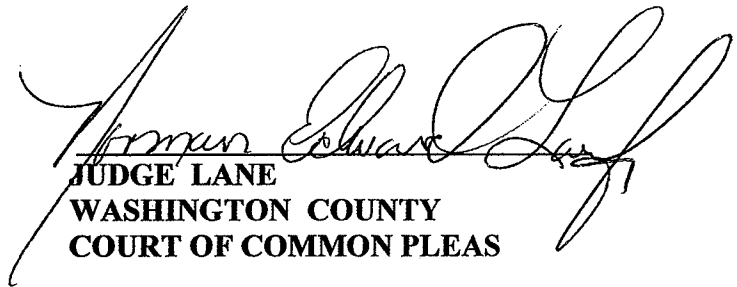
27. Upon signing of this Consent Order by the Court, the clerk is directed to enter it upon the journal. Within three (3) days of entering the judgment upon the journal, the clerk is directed to serve upon all parties notice of the judgment and its date of entry upon the journal in the manner prescribed by Rule 5(B) of the Ohio Rules of Civil Procedure and note the service in the appearance docket.

XIV. AUTHORITY TO ENTER INTO THE CONSENT ORDER

28. The signatory for the Defendant which is a corporation represents and warrants that he has been duly authorized to sign this document and so bind the corporation to all terms and conditions hereof.

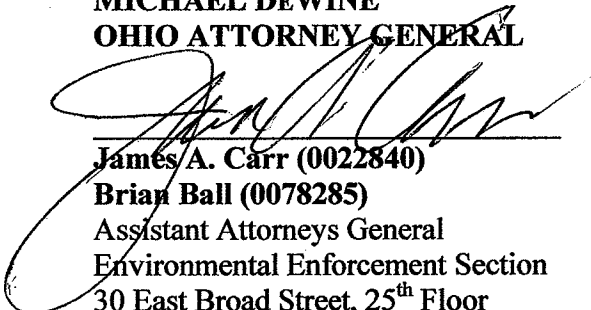
IT IS SO ORDERED:

2-15-12
DATE


JUDGE LANE
WASHINGTON COUNTY
COURT OF COMMON PLEAS

APPROVED:

**MICHAEL DEWINE
OHIO ATTORNEY GENERAL**


James A. Carr (0022840)
Brian Ball (0078285)
Assistant Attorneys General
Environmental Enforcement Section
30 East Broad Street, 25th Floor
Columbus, Ohio 43215
Telephone: (614) 466-2766
Facsimile (614) 644-1926

*Attorneys for Plaintiff
State of Ohio*


**NOTICE TO CLERK'S OFFICE
FINAL APPEALABLE ORDER**

ERAMET MARIETTA INC.,


Authorized Representative of Eramet Marietta Inc.

Print name: John Willoughby

Title: Chief Executive Officer


John A. Rego (0039774)
Jones Day
901 Lakeside Ave.
Cleveland, Ohio 44114

Attorney for Defendant