

**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.**

**: CASE NO. \_\_\_\_\_**  
**:**  
**:**  
**: JUDGE \_\_\_\_\_**  
**:**  
**:**  
**:**  
**: CONSENT ORDER FOR INJUNCTIVE**  
**: RELIEF AND CIVIL PENALTIES AND**  
**: FINAL JUDGMENT ENTRY**  
**:**

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The State of Ohio, by its Attorney General (“Plaintiff”/“the State”) and at the written request of the Director of the Ohio Environmental Protection Agency has filed a Complaint seeking injunctive relief and civil penalties against Defendant Eramet Marietta Inc. for violations of Ohio’s air pollution laws under R.C. Chapter 3704, the rules, and a permit adopted thereunder concerning the Defendant’s manganese ferroalloys operation located at 16705 State Route 7, Marietta, Washington County, Ohio 45750. Plaintiff and Defendant have consented to the entry of this Order.

Therefore, without trial, admission, or determination of any issue of fact or law and with the consent of the Parties hereto, it is ORDERED, ADJUDGED, AND DECREED:

## I. DEFINITIONS

1. As used in this Order, the following terms are defined:
  - a. “Defendant” means Eramet Marietta Inc. (“Eramet”).
  - b. “Director” means the Director of the Ohio Environmental Protection Agency (“Ohio EPA”) or his designee.
  - c. “Ferroalloys NESHAP” refers to the National Emission Standards for Hazardous Air Pollutants for Ferroalloys Production: Ferromanganese and Silicomanganese, 40 CFR Part 63, Subpart XXX.
  - d. “Operation” refers to Defendant’s manganese ferroalloys operation located at 16705 State Route 7, Marietta, Washington County, Ohio 45750.
  - e. “Order” refers to this Consent Order.
  - f. “Parties” mean Plaintiff, the State of Ohio, and Defendant Eramet Marietta Inc.
  - g. “Permit” means Final Permit to Install No. P0122503 issued by Ohio EPA.
  - h. “Person” means an individual, public or private corporation, business trust, estate, trust, partnership, association, federal government or any agency thereof, municipal corporation or any agency thereof, political subdivision or any agency thereof, public agency, interstate body created by compact, any other entity, and other officers, agents, employees, attorneys, and/or those in active concert or participation with any of them.
  - i. “State” means Plaintiff, the State of Ohio, including the Director, Ohio Environmental Protection Agency, or the Ohio Attorney General on behalf of the State, or any State entity.

- j. "Written" or "writing" means a paper copy or a saved, stored, or transmitted electronic copy.

## **II. JURISDICTION AND VENUE**

2. The Court has jurisdiction over the Parties and the subject matter of this action under R.C. 2307.382 and R.C. 3704.06. The Complaint states a claim upon which relief can be granted. Venue is proper in this Court. Defendant shall not challenge the Court's jurisdiction to enter or enforce this Consent Order.

## **III. PARTIES BOUND**

3. Defendant is a Delaware corporation licensed to conduct business for profit in Ohio since 1999 with its principal place of business at 16705 State Route 7, Marietta, Washington County, Ohio 45750.

4. This Order shall apply to and be binding only upon Defendant, and, to the extent consistent with Civ. R. 65(D), on its agents, officers, employees, contractors, assigns, successors in interest, and those persons acting in concert, privity, or participation with Defendant who receive actual or constructive notice of this Order whether by personal service, by public record filed in the county land record, or otherwise. Defendant shall provide a copy of this Consent Order to any successor in interest and to each key employee, consultant, or contractor employed to perform work referenced herein or to operate Defendant's Operation.

5. This Consent Order is in settlement and compromise of disputed claims, and nothing in this Consent Order is to be construed as an admission of any facts or liability.

6. If insolvency, bankruptcy, or other failure occurs, Defendant must pay the remaining unpaid balance of the total civil penalty.

#### IV. SATISFACTION OF LAWSUIT AND RESERVATION OF RIGHTS

7. Plaintiff alleges in its Complaint that Defendant is responsible for violations of Ohio's air pollution control laws under R.C. Chapter 3704. Defendant denies all such allegations. Compliance with this Consent Order shall constitute full satisfaction of any civil liability of Defendant to Plaintiff for the claims alleged in Plaintiff's Complaint.

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

- a. Seek any legal or equitable relief or civil penalties from Defendant or any other appropriate person for any claims or violations not alleged in the Complaint;
- b. Seek any legal or equitable relief or civil penalties from Defendant or any other appropriate person for claims, conditions or violations that arise after the entry of this Consent Order;
- c. Enforce this Consent Order through a contempt action or otherwise seek relief for violations of this Consent Order; and/or
- d. Take any future action against any appropriate person, including Defendant, to eliminate or mitigate conditions at the Operation that may threaten public health or welfare or the environment.

9. This Consent Order does not waive, abridge, settle, compromise, or otherwise impact any other claims in law or equity that the State may have against Defendant.

10. Except for the signatories to the Consent Order, 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, against any person not a signatory to this Consent Order for any liability such non-signatory(ies) may have arising out of matters alleged in the Complaint. The

State also specifically reserves its right to sue any entity that is not a signatory to this Consent Order.

11. This Consent Order is not a permit, or a modification of any permit, under any federal, State, or local laws or regulations. Nothing in this Consent Order shall relieve Defendant of its obligations to comply with applicable federal, state, or local statutes, regulations, rules, or ordinances, except as set forth herein. Defendant's compliance with this Consent Order shall be no defense to any action commenced pursuant to any such laws, regulations, or permits, except as set forth herein. The State does not, by consent to the entry of this Consent Order, warrant or aver in any manner that Defendant's compliance with any aspect of this Consent Order will result in compliance with provisions of R.C. Chapter 3704 or with any other provisions of federal, state, or local laws, regulations, rules, or permits.

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

13. This Consent Order shall not be construed to create rights in, or grant any cause of action to, any third party, not a party to this Consent Order.

#### **V. PERMANENT INJUNCTION**

14. Defendant is ordered and permanently enjoined to comply fully with R.C. Chapter 3704 and the rules thereunder.

15. Defendant is ordered and enjoined to do the following:
- a. On or before July 15, 2017, October 15, 2017, and January 15, 2018, Defendant shall provide Ohio EPA with reports describing the progress made in achieving the conditions set forth in the remainder of this paragraph, as well as any difficulties encountered or new information gathered. Based on such information, the Parties may mutually agree to modify the scope or timing of any such condition, provided that no condition hereunder may be extended beyond June 30, 2018 without the approval of the Court;
  - b. On or before September 15, 2017, commence scrubber efficiency improvement trials for the submerged electric arc Furnace #12 (Emissions Unit ID P908) and provide written notice to Ohio EPA demonstrating that Defendant has commenced such trials;
  - c. On or before December 1, 2017, complete scrubber efficiency improvement trials for the submerged electric arc Furnace #12 (Emissions Unit ID P908) and provide written notice to Ohio EPA demonstrating that Defendant has completed such trials;
  - d. On or before April 15, 2018, complete trials for fugitive capture efficiency improvements for the submerged electric arc Furnace #12 (Emissions Unit IDs P908, F020, and F021) and provide Ohio EPA with updated copies of the applicable written plans identified in 40 C.F.R. § 63.1627(b)(1), including a process fugitive ventilation plan for shop building C2F, or provide written notice by the same date to Ohio EPA of Defendant's intent to cease operation of Furnace #12 by May 1, 2018;

- e. On or before May 15, 2018, complete construction for all fugitive capture efficiency improvements for the submerged electric arc Furnace #12 (Emissions Unit IDs P908, F020, and F021) and provide written notice to Ohio EPA demonstrating that Defendant has completed construction, or provide written notice by the same date to Ohio EPA of Defendant's intent to cease operation of Furnace #12 by June 1, 2018;
- f. On or before July 15, 2017, commence trials for either spray systems or improved fugitive capture hooding over the casting beds for the submerged electric arc Furnace #12 casting operation (Emissions Unit ID F008) and provide written notice to Ohio EPA demonstrating that Defendant has commenced such trials;
- g. On or before May 15, 2018, complete construction of the fugitive abatement system for the submerged electric arc Furnace #12 casting operation (Emissions Unit ID F008) and provide written notice to Ohio EPA demonstrating that Defendant has completed construction, or provide written notice by the same date to Ohio EPA of Defendant's intent to cease operation of the Furnace #12 casting operation by June 1, 2018;
- h. On or before October 31, 2017, complete and submit to Ohio EPA in writing the process fugitive ventilation plan for shop building C3F, describing the improved fugitive capture system for the submerged electric arc Furnace #18 casting operation (Emissions Unit ID F009) and the metal transfer station (Emissions Unit ID F022) and metal oxygen refining unit ("MOR operation") (Emissions Unit ID F012);

- i. On or before April 15, 2018, complete construction of the improved capture system for the submerged electric arc Furnace #18 casting operation (Emissions Unit ID F009) and the metal transfer station (Emissions Unit ID F022) and MOR operation (Emissions Unit ID F012) and provide written notice to Ohio EPA demonstrating that it has completed construction, or provide written notice by the same date to Ohio EPA of Defendant's intent to cease operation of the Furnace #18 casting operation and MOR operation by May 1, 2018;
- j. On or before October 15, 2017, complete and submit to Ohio EPA in writing a conceptual plan for the evaluation of the mercury content and resulting emissions from alternative raw material sources for silicomanganese production;
- k. On or before October 15, 2017, complete and submit to Ohio EPA in writing a conceptual plan for the evaluation of the mechanisms for polycyclic aromatic hydrocarbon ("PAH") formation in silicomanganese and ferromanganese production operations;
- l. On or before May 1, 2018, complete and submit to Ohio EPA in writing a final evaluation of the mercury content and resulting emissions from alternative raw material sources for silicomanganese production;
- m. On or before May 1, 2018, complete and submit to Ohio EPA in writing a final evaluation of the mechanisms for PAH formation in silicomanganese and ferromanganese production operations;
- n. On or before June 30, 2018, demonstrate compliance with all applicable emissions standards required by the Permit, through its incorporation of 40 CFR § 63.1623, for all applicable equipment contained within Defendant's Operation.

Unless Defendant notifies Ohio EPA that applicable equipment has ceased operation as provided above in this Paragraph (Paragraph 15, subparagraphs d, e, g, or i), Defendant shall provide written notice to Ohio EPA demonstrating that it has completed post-construction emissions testing and achieved compliance on or before June 30, 2018 and submit a copy of the testing to Ohio EPA within 30 days of Defendant's completion of the testing; and

- o. Except for any specific deadline ordered and enjoined above in this Paragraph (Paragraph 15), Defendant is further ordered and enjoined to comply with the Ferroalloys NESHAP by June 30, 2018.

## **VI. CIVIL PENALTY**

16. Under R.C. 3704.06(C), Defendant is ordered and enjoined to pay a civil penalty of Ten Thousand Dollars (\$10,000.00), subject to the provisions set forth in Paragraphs 17 through 18. Full payment shall be made within thirty (30) days of entry of this Consent Order. Such payment shall be made by delivering to Scott Hainer, Paralegal, or his successor, Office of the Attorney General, 30 E. Broad St., 25th Floor, Columbus, Ohio 43215, a certified check for the appropriate amount, payable to the order of "Treasurer, State of Ohio."

17. If full payment is not paid as required in Paragraph 16 above, the remaining unpaid balance plus applicable interest under R.C. 131.02(D), less any amount already paid under this Order, shall become immediately due and owing. Any delinquent payments shall accrue interest at the maximum statutory rate under R.C. 5703.47 calculated from the Effective Date of this Order.

18. The State reserves the right to file a certificate of judgment lien against Defendant for the remaining unpaid balance of the total civil penalty, plus applicable interest per Paragraph 17

above, if the full payment is not paid according to the schedule in Paragraph 16 above. Defendant shall not be permitted to claim a force majeure as an excuse for any untimely payment or partial payment of an amount less than that specified in Paragraph 16.

## **VII. STIPULATED PENALTIES**

19. If Defendant fails to comply with any of the requirements of Paragraph 15 of this Order, Defendant shall immediately and automatically be liable for and shall pay stipulated penalties under the following schedule:

- i. Defendant shall pay three hundred dollars (\$300.00) per day for each day any requirement of this Consent Order is violated up to the first thirty (30) days of violation;
- ii. For each day any requirement of this Consent Order is violated between thirty (30) days and ninety (90) days of violation, Defendant shall pay six hundred dollars (\$600.00) per day;
- iii. For each day any requirement of this Consent Order is violated greater than (90) days of violation, Defendant shall pay one thousand dollars (\$1,000.00) per day.

20. Stipulated penalties due under this Consent Order shall be immediately due and owing without demand by the State and shall be paid by certified check or money order, payable to "Treasurer, State of Ohio" and delivered to Scott Hainer or his successor, Paralegal, at the Office of the Ohio Attorney General, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215.

21. Defendant's payment and Plaintiff's acceptance of such stipulated penalties under this Section shall not be construed to limit Plaintiff's authority, without exception, to seek: 1) additional relief under R.C. Chapter 3704, including civil penalties under R.C. 3704.06; 2) judicial enforcement of this Order for the same violations for which a stipulated penalty was paid; or 3) additional civil, criminal, or administrative sanctions or remedies for violations of

applicable laws or rules. Further, payment of stipulated penalties by Defendant shall not be an admission of liability by Defendant.

### **VIII. POTENTIAL FORCE MAJEURE**

22. With respect to the operation of Section VII (Stipulated Penalties) and in any action by Plaintiff to enforce any of the provisions of this Consent Order, except for any provision in Section VI (Civil Penalty) above, Defendant may raise that it is entitled to a defense that its conduct was caused by reasons entirely beyond its control such as, by way of example and not limitations, acts of God, strikes, acts of war or civil disturbances. While Plaintiff does not agree that such a defense exists, it is, however, hereby agreed upon by Defendant and Plaintiff that it is premature at this time to raise and adjudicate the existence of such a defense and that the appropriate point at which to adjudicate the existence of such a defense is at the time that an enforcement or collection action, if any, is commenced by the Plaintiff. At that time, Defendant will bear the burden of proving that any delay was or will be caused by circumstances entirely beyond the control of Defendant. Unanticipated or increased costs associated with the implementation of any action required by this Consent Order, or changed financial circumstances, shall not constitute circumstances entirely beyond the control of Defendant or serve as a basis for an extension of time under this Consent Order.

23. Defendant shall be prohibited from raising any force majeure defense if Defendant fails to notify Ohio EPA in writing as set forth in this Paragraph of the reasons upon which the purported defense is based. Defendant shall provide such written notice to Ohio EPA within fourteen (14) days from when Defendant knew, or by the exercise of due diligence should have discovered such reasons, describing in detail the anticipated length of delay, the precise cause or causes of delay, the measures taken and to be taken by the Defendant to prevent or minimize the

delay, and the timetable by which measures will be implemented. Defendant will adopt all reasonable measures to avoid or minimize such delay. It shall be the option of Plaintiff to construe the failure to provide timely notice as a waiver of Defendant's right to request an extension of its obligations under this Consent Order based on such incident. An extension of one date based on a particular incident does not mean that Defendant qualifies for an extension of a subsequent date or dates. Defendant must make an individual showing of proof regarding each incremental step or other requirement for which an extension is sought. Acceptance of this Consent Order with a Potential Force Majeure Clause does not constitute a waiver by Defendant of any rights or defenses it may have under applicable law.

#### **IX. SUBMITTAL REQUIREMENT**

24. Unless otherwise specified in this Order, all notices, designs, evaluations, plans and/or other documents of any kind that are required to be submitted to Ohio EPA pursuant to this Order shall be sent to: Ohio Environmental Protection Agency, Southeast District Office, Division of Air Pollution Control, ATTN: Racheal Davies (racheal.davies@epa.ohio.gov), or her successor, 2195 Front Street, Logan, Ohio 43138; and Ohio Environmental Protection Agency, Central Office, Division of Air Pollution Control, ATTN: Jim Kavalec (jim.kavalec@epa.ohio.gov), or his successor, 50 W. Town St, Suite 700, P.O. Box 1049, Columbus, Ohio 43216.

#### **X. COMPLIANCE NOT DEPENDENT ON GRANTS OR LOANS**

25. Performance of the terms of this Consent Order by Defendant is not conditioned on the receipt of any private, federal or state grants, loans, and/or funds. In addition, Defendant's performance is not excused by failing to obtain, or any shortfall of, any private, federal or state grants, loans and/or funds or by the processing of any applications for the same.

## **XI. EFFECT OF CONSENT ORDER**

26. This Consent Order does not constitute authorization or approval of the construction, installation, modification, or operation of any air contaminant source, source operation, or any building, structure, facility, facility component, operation, installation, disposal or storage site, other physical facility, or real or personal property that emits or may emit any air pollutant or air contaminant not previously approved by Ohio EPA, under the Clean Air Act, or by a permitting authority or its delegates. Approval for any such construction, installation, modification, or operation shall be by permit issued by Ohio EPA or other such permits as may be required by applicable federal, state, or local laws, rules, or regulations.

## **XII. MODIFICATION**

27. No modification shall be made to this Consent Order without the written agreement of the Parties and the Court.

## **XIII. MISCELLANEOUS**

28. Any acceptance by the State of any payment, document, or other work due subsequent to the time that the obligation is due under this Consent Order shall not relieve Defendant from the obligations created by this Consent Order.

29. Defendant shall inform Ohio EPA of any change in its Registered Agent's address and business addresses or telephone numbers, or the cessation of the business that is the subject of this action.

## **XIV. RETENTION OF JURISDICTION**

30. This Court shall retain jurisdiction for the purpose of administering and enforcing this Consent Order. Termination of any or all of the provisions of this Consent Order may be granted upon a joint motion of the parties.

## **XV. ENTRY OF CONSENT ORDER AND FINAL JUDGMENT BY CLERK**

31. Under Rule 58 of the Ohio Rules of Civil Procedure, upon signing 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 Civ.R. 5(B) and note the service in the appearance docket. The failure of the Clerk to serve notice does not affect the validity or effectiveness of this Consent Order.

32. The Parties agree and acknowledge that final approval by Plaintiff and Defendant and entry of this Consent Order is subject to notice of lodging of the Consent Order, opportunity for public comment, and the consideration of any public comments. Plaintiff and Defendant reserve the right to withdraw this Consent Order based on comments received during the public comment period.

## **XVI. EFFECTIVE DATE**

33. This Consent Order shall be effective upon the date of its entry by the Court.

## **XVII. COURT COSTS**

34. Defendant is ordered to pay all court costs of this action. Defendant is also ordered to pay the costs incurred by the Ohio EPA for the publication of notice of the Consent Order in Ohio EPA's Weekly Review and a local newspaper of general circulation. Defendant shall pay the costs associated with publication by delivering a certified check payable to: "Treasurer, State of Ohio" and with a notation indicating that the payment relates to publication costs, within thirty (30) days from the date it receives notice from Ohio EPA.

**XVIII. AUTHORITY TO ENTER INTO THE CONSENT ORDER**

35. Each signatory represents and warrants he or she has been duly authorized to sign this document and is fully authorized to agree to its terms and conditions, and, in the case of a person signing on behalf of a corporate entity, may so legally bind the corporate entity to all terms and conditions in this document.

**IT IS SO ORDERED.**

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**JUDGE**

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**DATE**

**APPROVED AND AGREED TO BY:**

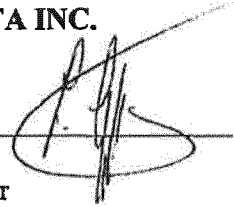
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**ERAMET MARIETTA INC.**



**Laure Guillot**  
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