



John R. Kasich, Governor  
Mary Taylor, Lt. Governor  
Scott J. Nally, Director

**CERTIFIED MAIL**

December 18, 2012

EMC Ashtabula LP  
P.O. Box 266  
Pittsburgh, PA 15230

EMC Metals, Inc.  
P.O. Box 266  
Pittsburgh, PA 15230

**Re: Director's Final Findings and Orders**

Dear Sir or Madam:

Transmitted herewith are Director's Final Findings and Orders issued on December 18, 2012, concerning the matter indicated.

If you have any questions, please contact Jeff Hurdley at (614) 644-3037.

Sincerely,

Georgia Frakes, Management Analyst  
Division of Materials and Waste Management

Enclosure

cc: Bruce McCoy, DMWM, CO  
Fanny Haritos, DMWM, CO  
Jeff Hurdley, Legal  
Colum McKenna, DMWM, NEDO

OHIO E.P.A.

DEC 18 2012

ENTERED DIRECTOR'S JOURNAL

Date Issued: December 18, 2012

Date Effective: December 18, 2012

BEFORE THE  
OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter Of:

EMC Ashtabula LP  
P.O. Box 266  
Pittsburgh, PA 15230

Director's Final Findings  
and Orders

and

EMC Metals, Inc.  
P.O. Box 266  
Pittsburgh, PA 15230

Respondents

PREAMBLE

It is hereby agreed by and between the parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are hereby issued to Respondents pursuant to the authority vested in the Director of the Ohio Environmental Protection Agency ("Ohio EPA") under sections 3734.13 and 3745.01 of the Ohio Revised Code ("ORC").

II. PARTIES

These Orders shall apply to and be binding upon the Respondents and their successors in interest liable under Ohio law. No changes in ownership relating to Respondents or to the property located at 2700 Lake Road East in Ashtabula, Ohio, will in any way alter the Respondents' responsibilities under these Orders. The Respondents' obligations under these Orders may be altered only by the written approval of the Director of Ohio EPA.

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.

*Jana Lassiter* 01/12-18-12

### III. DEFINITIONS

Unless otherwise stated, all terms used in these Orders shall have the same meaning as used in ORC Chapter 3734. and the rules promulgated thereunder.

### IV. FINDINGS OF FACT

The Director has determined the following:

1. As of January 10, 2005, Elkem Metals Company - Ashtabula LP was a foreign limited partnership with a mailing address of 1013 Centre Road in Wilmington, Delaware, which owned and operated a calcium carbide production plant located at 2700 Lake Road East in Ashtabula, Ohio ("Ashtabula Plant").

As of January 10, 2005, Elkem Metals, Inc., was a general partner of Elkem Metals Company - Ashtabula LP with a mailing address of Airport Office Park, Building 2, 400 Rouser Road, in Moon Township, Pennsylvania.

Respondent EMC Ashtabula LP, formerly known as Elkem Metals Company - Ashtabula LP, is a foreign limited partnership with a mailing address of 1013 Centre Road in Wilmington, Delaware, and owns and operates the Ashtabula Plant, including an industrial process wastewater treatment plant ("Industrial Process WWTP") located at 2700 Lake Road East (State Route 531), Ashtabula Township, Ashtabula County. Respondent EMC Metals, Inc., formerly known as Elkem Metals, Inc., is a general partner of EMC Ashtabula LP with a mailing address of Airport Office Park, Building 2, 400 Rouser Road, in Moon Township, Pennsylvania.

Respondent EMC Ashtabula LP and Respondent EMC Metals, Inc. will be collectively referred to within the Orders as "Respondents".

2. The Director issued Final Findings and Orders to Elkem Metals Company - Ashtabula LP and Elkem Metals, Inc. on January 10, 2005, which were previously modified, ("2005 Orders") that required Elkem Metals Company - Ashtabula LP, Elkem Metals, Inc., and Respondents to, among other things, complete the closure of Ponds 3 and 3A at the Ashtabula Plant.
3. Paragraph 7D. of Section V. of the 2005 Orders required Elkem Metals Company - Ashtabula LP, Elkem Metals, Inc., and Respondents to include in the Closure/Post Closure Plan for Ponds 3 and 3A provisions for the installation of a sewer line extension to be constructed during the closure of the Ponds that was capable of conveying leachate from Ponds 3 and 3A to the local POTW. The 2005 Orders required Elkem Metals Company - Ashtabula LP, Elkem Metals, Inc., and Respondents to apply for all necessary permits for the sewer line extension, and once all necessary permits were obtained, Elkem Metals Company - Ashtabula LP, Elkem Metals, Inc., and Respondents were required to send the leachate from Ponds 3 and 3A to the local POTW to the extent that Elkem Metals Company -

Ashtabula LP, Elkem Metals, Inc., and Respondents were not treating or managing the leachate in an alternative manner approved by Ohio EPA.

4. Elkem Metals Company – Ashtabula LP, Elkem Metals, Inc., and Respondents have not constructed the sewer line extension as required by Paragraph 7D. of the 2005 Orders. However, Respondents have represented to Ohio EPA that they have been treating all leachate from Ponds 3 and 3A through existing on-site treatment at the Ashtabula Plant.
5. In discussions with the Ohio EPA during August of 2012, Respondents indicated that they intend to apply for authorization, and upon receiving approval, construct a system to treat the leachate from Ponds 3 and 3A and pollutants from other sources at the Ashtabula Plant. Respondents indicated that as part of this process, they may manage the leachate from such sources through a means other than sending the leachate from Ponds 3 and 3A to the local POTW as required by Paragraph 7D. of the 2005 Orders.
6. Respondents have represented to Ohio EPA that after the 2005 Orders were executed, Respondents have been negotiating with the City of Ashtabula for the installation of a sewer line extension from the Ashtabula Plant to the City of Ashtabula waste water treatment plant in order to send the leachate from Ponds 3 and 3A for treatment and discharge.

#### V. ORDERS

The 2005 Orders are hereby modified as follows:

1. Paragraph 7D. of Section V. Orders, shall be modified to read:

Respondents shall submit a Management Plan proposing a method to treat the leachate from Ponds 3 and 3A to the Division of Surface Water, Northeast District Office for review and approval no later than October 1, 2013. After the certification of closure of Ponds 3 and 3A in accordance with these Orders, Respondents' management of the leachate from Ponds 3 and 3A shall be an element of the post closure care of the Ponds under these Orders.
2. Section IV. Orders, shall be modified to add the following new Paragraph 67:

EMC Ashtabula LP and EMC Metals, Inc. are, respectively, successors in interest to Elkem Metals Company – Ashtabula LP and Elkem Metals, Inc., and shall be liable as "Respondents" under these Orders.
3. All other provisions of the 2005 Orders shall remain unchanged and in full effect.

## VI. 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 signatory to these Orders, for any liability arising out of or relating to the Ashtabula Plant.

## VII. OTHER APPLICABLE LAWS

All actions required to be taken pursuant to these Orders shall be undertaken in accordance with the requirements of all applicable federal, state, and local laws and regulations. Nothing in these Orders shall be construed as waiving or compromising in any way the applicability and enforcement of any other statutes or regulations applicable to the Ashtabula Plant. These Orders are not, and shall not be construed to be, a permit or license issued pursuant to any statute or regulation. Ohio EPA reserves all rights and privileges except as specified herein.

## VIII. NOTICE

All documents demonstrating compliance with these Orders and all other documents required under these Orders to be submitted to Ohio EPA shall be addressed to:

Ohio Environmental Protection Agency  
Northeast District Office  
Division of Solid and Infectious Waste Management  
Attn: Supervisor, DSIWM  
2110 East Aurora Road  
Twinsburg, OH 44087

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

## IX. RESERVATION OF RIGHTS

Ohio EPA reserves the right to seek legal and equitable relief to enforce the terms and conditions of these Orders and the 2005 Orders, including penalties against Respondents for noncompliance with these Orders and the 2005 Orders. Nothing herein shall restrict the right of Respondents to raise any administrative, legal or equitable claim or defense with respect to such further actions which Ohio EPA may seek to require of Respondents.

Except for claims for civil penalties for the violations specifically cited herein, Ohio EPA reserves the right to take any action and pursue any claim against Respondents, and any other potentially liable parties, including but not limited to, any administrative, civil or criminal enforcement action or claim, pursuant to any available legal authority as a result of past, present or future violations of state or federal laws or regulations, as a result of the common law and/or as a result of events or conditions arising from or related to the Ashtabula Plant. Ohio EPA expressly and specifically reserves the right to take any

action and pursue any claim against Respondents, and other potentially liable parties, with respect to any activities performed by Respondents or other potentially liable parties pursuant to these Orders, the 2005 Orders, and/or in relation to Ponds 3 and 3A. In the event that Ohio EPA takes an administrative or judicial action or pursues any claim against Respondents regarding any of the closure activities performed by Respondents for Ponds 3 and 3A, Respondents reserve the right to appeal, defend a claim and defend against such an action by Ohio EPA in order to assert that the closure activities performed by Respondents are technically feasible and will not result in any adverse impact to public health or safety or the environment.

Ohio EPA expressly and specifically reserves the right to take any action and pursue any claim pursuant to any available legal authority to address violations of law which are not specifically cited in these Orders or the 2005 Orders. Nothing herein shall restrict the right of Respondents to raise any administrative, legal or equitable claim or defense with respect to such further actions which Ohio EPA may seek to require of Respondents, except that Respondents expressly waive any and all claims and defenses of res judicata, collateral estoppel, waiver, laches, statute of limitations, issue preclusion, claim splitting and other claims and defenses based upon any contention that the actions taken or claims raised by Ohio EPA or the State of Ohio in a subsequent proceeding were or should have been raised, brought or resolved in the 2005 Orders.

#### X. MODIFICATION

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.

#### XI. WAIVER

In order to resolve disputed claims, without admission of fact, violation or liability, Respondents consent to the issuance of these Orders and agree to comply with these Orders and all provisions of the 2005 Orders as modified. Compliance with these Orders and all provisions of the 2005 Orders as modified shall be full accord and satisfaction of Respondents' liability, including for any and all civil penalties, for the violations specifically cited in the 2005 Orders after termination of the 2005 Orders.

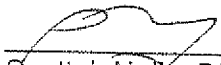
The Respondents hereby waive the right to appeal the issuance, terms and service of these Orders, and the Respondents hereby waive any and all rights they may have to seek administrative or judicial review of these Orders either in law or equity.

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

XII. SIGNATORIES

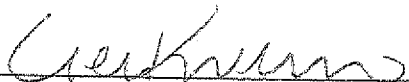
Each undersigned representative of a signatory to these Orders certifies that he or she is fully authorized to enter into the terms and conditions of these Orders and to legally bind such signatory to this document.

IT IS SO ORDERED AND AGREED:

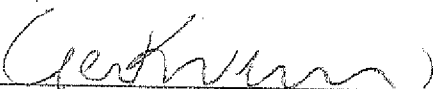
  
\_\_\_\_\_  
Scott J. Nally, Director  
Ohio Environmental Protection Agency

IT IS SO AGREED:

EMC Ashtabula LP  
(Formerly known as Respondent Elkem Metals Company – Ashtabula LP)

By:  \_\_\_\_\_ Date 10/11/12  
Title: PRESIDENT

EMC Metals, Inc.,  
(Formerly known as Respondent Elkem Metals, Inc.)

By:  \_\_\_\_\_ Date 10/11/12  
Title: PRESIDENT