



State of Ohio Environmental Protection Agency

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December 9, 2009

Elkem Metals Company – Ashtabula LP
1013 Centre Road
Wilmington, DE 19805

And

Elkem Metals, Inc.
Airport Office Park Building 2
400 Rouser Road
Moon Township, PA 15108

RECEIVED

DEC 10 2009

OHIO EPA NEDO

CERTIFIED MAIL

Director's Final Findings & Orders

Dear Sir or Madam:

Transmitted herewith are Final Findings & Orders of the Director concerning the matter indicated.

Sincerely,

Kimberly Reese
Systems Management Unit
Division of Solid & Infectious Waste Management

cc: Bruce McCoy, CO, DSIWM
Lynn Sowers, NEDO, DSIWM
Jeff Hurdley, CO, Legal

Ted Strickland, Governor
Lee Fisher, Lieutenant Governor
Chris Korleski, Director

OHIO E.P.A.

DEC -9 2009

ENTERED DIRECTOR'S JOURNAL

Date Issued: DEC 09 2009

Date Effective: DEC 09 2009

**BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY**

In the Matter Of:

Elkem Metals Company - Ashtabula LP
1013 Centre Road
Wilmington, DE 19805

: Director's Final Findings
: and Orders
:

and

Elkem Metals, Inc.
Airport Office Park Building 2
400 Rouser Road
Moon Township, PA 15108

: 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.
:

Respondents

BY: Wanda Lassiter Date: 12-9-09

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 Respondent Elkem Metals Company - Ashtabula, or to its calcium carbide production plant 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.

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. Respondent Elkem Metals Company - Ashtabula LP ("Respondent Elkem - Ashtabula") is a foreign limited partnership with a mailing address of 1013 Centre Road in Wilmington, Delaware, which owns and operates a calcium carbide production plant located at 2700 Lake Road East in Ashtabula, Ohio ("Ashtabula Plant").

Respondent Elkem Metals, Inc. ("Respondent Elkem, Inc.") is 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 Elkem - Ashtabula and Respondent Elkem, Inc. may be collectively referred to within the Orders as "Respondents".

2. The Director issued Final Findings and Orders to Respondents on January 10, 2005, ("2005 Orders") that required Respondents to, among other things, complete the closure of Ponds 3 and 3A at the Ashtabula Plant by no later than December 31, 2009.
3. Respondents sent a letter to Ohio EPA dated June 19, 2009, wherein Respondents requested that the Director modify Section V., Paragraph 13 of the 2005 Orders to extend the time for completion of closure of Ponds 3 and 3A for an additional two years. Respondents requested the extension because of issues associated with an independent third party that was considering the purchase of the Ashtabula Plant and because of the general downturn of the economy had negatively impacted Respondents' ability to complete closure as required.
4. The Director is willing to extend the time for completion of closure as required in Section V, Paragraph 13 of the 2005 Orders provided Respondents begin closure activities in the field by April 1, 2010, and complete closure activities by December 31, 2010.
5. Respondents and Ohio EPA are currently engaged in discussions regarding concerns Ohio EPA has about the technical adequacy and feasibility of the alternative closure measures Respondents have proposed for Ponds 3 and 3A.

V. ORDERS

The Director's Final Findings and Orders issued to Respondents on January 10, 2005, are hereby modified as follows:

1. Paragraph 13 of Section V. Orders, shall be modified to read:

Respondents shall begin in field closure activities by April 1, 2010, and shall complete closure of Ponds 3 and 3A pursuant to OAC Rule 3745-27-11, or the Closure/Post Closure Plan required pursuant to these Orders, by no later than December 31, 2010, except as otherwise extended by Ohio EPA in writing.

2. 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, including penalties against Respondents for noncompliance with these 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 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. 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 these Orders.

X. INDEMNIFICATION

Respondents agree to indemnify, save, and hold harmless Ohio EPA from any and all claims or causes of action arising from, or related to, any acts or omissions of

Respondents and/or Ohio EPA, its officers, employees, agents, representatives, or assigns, in carrying out any "Discretionary Function" as defined pursuant to these Orders and/or any activities pursuant to the Interim Director's Final Findings and Orders issued to Respondents on April 30, 2002, and September 15, 2003, February 27, 2004 and May 28, 2004, including claims or causes of action that Ohio EPA exercised a Discretionary Function in a negligent manner. Except as provided above, nothing in these Orders shall render Respondents liable to indemnify Ohio EPA for any negligence, gross negligence or other tortuous act or omission of Ohio EPA occurring outside of the Ohio EPA's exercise of its Discretionary Function. For purposes of these Orders, "Discretionary Function" means Ohio EPA's review, approval or disapproval of the Closure/Post Closure Plan under these Orders and any oversight and/or performance of the closure, post closure care and/or corrective measures by Ohio EPA for Ponds 3 and 3A. Ohio EPA agrees to provide notice to the Respondents within thirty (30) days after receipt of any claim which may be the subject of indemnity as provided in this Section, and to cooperate with Respondents in the defense of any such claim or action against Ohio EPA. Ohio EPA shall not be considered a party to and shall not be held liable under any contract entered into by Respondents in carrying out the activities pursuant to these Orders.

XI. TERMINATION

Respondents' obligations under these Orders shall terminate when Respondents certify in writing and demonstrate to the satisfaction of Ohio EPA that Respondents have performed all obligations under these Orders and the Chief of Ohio EPA's Division of Solid and Infectious Waste Management acknowledges, in writing, the termination of Respondents' obligations under these Orders. If Ohio EPA does not agree that all obligations have been performed, then Ohio EPA will notify Respondents of the obligations that have not been performed, in which case Respondents shall have an opportunity to address any such deficiencies and seek termination as described above. The certification shall contain the following attestation: "We certify that the information contained in or accompanying this certification is true, accurate and complete."

This certification shall be collectively submitted by Respondents to Ohio EPA and shall be signed by a responsible official of each Respondent. For purposes of these Orders, a responsible official is a principal executive officer of at least the level of vice-president, or his duly authorized representative, if such representative is responsible for the overall operation of the facility.

The termination of Respondents' obligations under these Orders shall not terminate Respondents' obligations under Section X, Indemnification, of these Orders.

XII. 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.

XIII. 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. Compliance with these Orders shall be full accord and satisfaction of Respondents' liability, including for any and all civil penalties, for the violations specifically cited herein after termination of these 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.

XIV. 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:



Chris Korleski, Director
Ohio Environmental Protection Agency

Elkem Metals Company - Ashtabula LP (Respondent Elkem - Ashtabula)

By: Mark De

11/30/09
Date

Title: President

Elkem Metals, Inc. (Respondent Elkem, Inc.)

By: Mark De

11/30/09
Date

Title: President