

BEFORE THE OHIO

ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:	:	<u>Directors Final Findings</u>
Shieldalloy Metallurgical Corporation	:	<u>and Orders</u>
60790 Southgate Road	:	
Cambridge, Ohio 43725	:	
	:	

PREAMBLE

It is agreed by the parties hereto as follows:

I. JURISDICTION

These Director’s Final Findings and Orders (“Orders”) are issued to Shieldalloy Metallurgical Corporation (“Respondent”), pursuant to the authority vested in the Director of the Ohio Environmental Protection Agency (“Ohio EPA”) under Ohio Revised Code(“ORC”) 3753.08 and 3745.01.

II. PARTIES BOUND

These Orders shall apply to and be binding upon Respondent and successors in interest liable under Ohio law. No change in ownership of the Respondent, or of the facility owned by the Respondent shall in any way alter Respondent’s obligations under these Orders.

III. DEFINITIONS

Unless otherwise stated, all terms used in these Orders shall have the same meaning as defined in ORC Chapter 3753 and the rules promulgated thereunder.

IV. FINDINGS

The Director of the Ohio EPA has determined the following findings:

1. Respondent operates a metallurgical and vanadium chemical manufacturing facility located at 60790 Southgate Road Cambridge, Ohio. This facility manufactures several products, including vanadium oxychloride by mixing raw materials with chlorine. The regulated chemical chlorine, is listed in Ohio Administrative Code (OAC) rule 3745-104-04 and has a threshold limit of 2,500 lbs. The Ohio EPA conducted an unannounced visit on May 14, 2002 to question the amount of chlorine that the facility had on site. The facility official stated that the facility has in the past, and will in the future, store up to a maximum amount of 30,000 lbs of chlorine on site. If more than 2,500 lbs of chlorine is in a “process,” as defined by OAC rule 3745-104-01, then the facility is subject to the Risk Management Plan (RMP) Program.

2. An owner or operator of a stationary source that has more than a threshold quantity of a regulated substance in a process, as determined by rule 3745-104-02 of the Administrative Code, shall comply with the requirements of this rule by submitting a Risk Management Plan (RMP) no later than June 21,1999.
3. On May 22, 2002, the Respondent received a letter from Ohio EPA regarding the May 14, 2002, audit and the agency's position that the RMP rules applied to the Respondent. Ohio EPA also alleged the Respondent had multiple violations of OAC 3745-104. The letter indicated that if the Respondent disputed the applicability of the rule, that documentation should be submitted to prove that the company was not subject to the RMP. Otherwise the company was required to submit the RMP within thirty (30) days during negotiations. Respondent replied by submitting the requested documentation. However, Ohio EPA and Respondent disagreed on the applicability of the RMP Program for Shieldalloy Metallurgical.
4. The Respondent, during negotiations, explained that unused 2,000 lb cylinders of chlorine in storage are physically separated from any cylinder in use, and that a release from one of the cylinders could not lead to a release from another. In addition, the Respondent stated that an event external to the containers, such as a fire or explosion, would not have the potential to release chlorine from the containers.
5. The director has given consideration to, and based his determination on, evidence relating to the technical feasibility and economic reasonableness of complying with the following Orders and benefits to the people of the State to be derived from such compliance.
6. The parties desire to amicably resolve this matter without a hearing with Findings of Fact and conclusion of law being made.

V. ORDERS

The Director hereby issues the following Orders:

1. Pursuant to ORC 3753.09, Respondent is assessed a civil penalty in the amount of fifteen thousand dollars (\$15,000) in settlement of Ohio EPA's claim for civil penalties. Within thirty (30) days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of fifteen thousand dollars (\$15,000) in settlement of Ohio EPA's claims for civil penalties, which will be deposited into the Risk Management Plan fund established pursuant to ORC 3753.05.

Payment shall be made by an official check made payable to "Treasurer, State of Ohio" for \$15,000. The official check shall be submitted to Ohio EPA, Office of Fiscal Administration, attention Brenda Case, P. O. Box 1049, Columbus, Ohio 43216-1049, together with a letter identifying the Respondent and the facility.

A copy of the check shall be sent to:

Jim Orlemann
Manager, Engineering Section
Ohio Environmental Protection Agency
Division of Air Pollution Control
Lazarus Government Center
P.O. Box 1049
Columbus, Ohio 43216-1049

VI. TERMINATION

Respondent's obligations under these orders shall terminate upon Ohio EPA's receipt of the official check required by Section V of these Orders.

VII. 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 party to these Orders, for any liability arising from, or related to Respondent.

VIII. OTHER APPLICABLE LAWS

All actions required to be taken pursuant to these Orders shall be undertaken in accordance with the requirements of all applicable local, state and federal laws and regulations. These Orders do not waive or compromise the applicability and enforcement of any other statutes or regulations applicable to Respondent

IX. MODIFICATIONS

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 the Ohio EPA.

X. NOTICE

All documents required to be submitted by Respondent pursuant to these Orders shall be addressed to,

Ohio Environmental Protection Agency
Division of Air Pollution Control
P.O. Box 1049
Columbus, Ohio 43216-0149
Attention: Kimberly Joseph, DAPC, RMP

XI. RESERVATION OF RIGHTS

Ohio EPA and Respondent each reserve all rights, privileges and causes of action, except as specifically waived in section XII of these Orders.

XII. WAIVER

In order to resolve disputed claims, without admission of fact, violation or liability, and in lieu of further enforcement action by Ohio EPA for only the violations specifically cited in these Orders, Respondent consents to the issuance of these Orders and agrees to comply with these Orders. Compliance with these orders shall be a full accord and satisfaction for Respondent's liability for the violations specifically cited herein.

Respondent hereby waives the right to appeal the issuance, terms and conditions, and services of these Orders, and Respondent hereby waives any and all rights Respondent may have to seek administrative or judicial review of these Order either in law or equity.

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

XIII. EFFECTIVE DATE

The effective date of these Orders is the date these Orders are entered into the Ohio EPA Director's journal.

XIV. SIGNATORY AUTHORITY

Each undersigned representative of a party to these Orders certifies that he or she is fully authorized to enter into these Orders and to legally bind such party to these Orders.

IT IS SO ORDERED AND AGREED:

Ohio Environmental Protection Agency

Christopher Jones
Director

Date

IT IS AGREED:

Shieldalloy Metallurgical Corporation

Signature

Date

Printed or Typed Name

Title