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IN THE COURT OF COMMON PLEAS
TUSCARAWAS COUNTY, OHIO

OHIO EPA
OF SOLID & INFECTIOUS WASTE MGMT
A 10:20

STATE OF OHIO, ex rel. 2001 SEP 14 P 2:
BETTY D. MONTGOMERY, :
ATTORNEY GENERAL OF OHIO W. CLARKE :
CLERK OF COURTS JUDGE

CASE NO. 87-CV120412 ATTORNEY GENERAL OFFICE

Plaintiff, :

v. :

AMENDMENT TO THE DECEMBER
1,1989 CONSENT ORDER

BARMET ALUMINUM CORP. :
Now Known as COMMONWEALTH :
ALUMINUM CONCAST, INC., an :
Ohio corporation, :

Defendant. :

The Plaintiff, State of Ohio, by its Attorney General, Betty D. Montgomery, having filed an Amended Complaint on August 2, 1988 seeking injunctive relief and civil penalties against Defendant Barmet Aluminum Corporation, now known as Commonwealth Aluminum Concast, Inc. ("Concast" or "Defendant") in this matter for alleged violations of Ohio Revised Code Chapters 3734 and 6111 and the rules adopted thereunder;

WHEREAS, the Parties entered into a Consent Order for resolution of the violations set forth in the Amended Complaint, which Consent Order was entered by the Court on December 1, 1989 ("1989 Order");

WHEREAS, this Court retained jurisdiction over this case pursuant to the Section III of the 1989 Order for purposes of making any additional order or decree that the Court may deem necessary;

WHEREAS, the Parties wish to modify certain provisions of the 1989 Order, with the consent of this Court, in this "Amendment to the 1989 Order";

NOW, THEREFORE, without adjudication or admission of any issue of fact or law, it is

hereby ORDERED, ADJUDGED and DECREED as follows:

I: JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter and the parties of this case.

This Court shall retain jurisdiction over this action in order to monitor compliance with the terms of the 1989 Order and the terms of this Amendment to the 1989 Order.

II. DEFINITIONS

2. Unless otherwise stated in this Amendment to the 1989 Order, all terms used in this Amendment to the 1989 Order shall have the same meaning as used in (i) R.C. Chapters 3734 and 6111 and the regulations adopted thereunder, and (ii) in the 1989 Order. In addition, certain terms are defined as follows:

A. "Defendant" means Commonwealth Aluminum Concast, Inc., an Ohio corporation, formerly named Barmet Aluminum Corporation.

B. "Facility" means the former aluminum smelting site owned and operated by Defendant located on the *west* side of Tuscarawas County Rd. 28 in Uhrichsville, Tuscarawas County, Ohio, and which was previously defined in Paragraph 7(B) of the 1989 Order as the "Uhrichsville Recycling Division."

III. PARTIES BOUND

3. The provisions of this Amendment to the 1989 Order shall apply to and be binding upon Defendant, its successors in interest, assigns, and upon all persons, contractors, and consultants acting in concert or participation with it. So long as Defendant complies with the provisions of the 1989 Order and this Amendment to the 1989 Order, Plaintiff is bound to honor the release of its claims to the extent set forth in this Amendment to the 1989 Order.

4. No change in Corporate ownership or status of Defendant including, without

limitation any transfer of assets or real or personal property, shall in any way alter Defendant's obligations under this Amendment to the 1989 Order. Defendant shall provide a copy of this Amendment to the 1989 Order to any subsequent owner(s) or successor(s) prior to the transfer of the Company's ownership rights.

IV. PURPOSE OF THIS AMENDED CONSENT ORDER

5. The purpose of this Amendment to the 1989 Order is to modify:

(i) Section LX. GROUNDWATER INVESTIGATION WORKPLAN;

(ii) Section X. RECYCLING AND REMOVAL WORKPLAN; and

(iii) Section XII. PROJECT COORDINATORS

of the: 1989 Order with the provisions set forth below.

All other terms, conditions, and requirements of the 1989 Order remain in full force and effect and are binding upon the Parties to the 1989 Order, except as expressly specified herein.

V. PERMANENT INJUNCTION

6. The Defendant is hereby ordered and enjoined to immediately comply with all the requirements set forth in Section VI. COMPLIANCE SCHEDULE FOR FINAL CLOSURE AND POST-CLOSURE CARE of this Amendment to the 1989 Order.

7. The Defendant is hereby ordered and enjoined to immediately comply with all the requirements of the 1989 Order that are not specifically amended by this Amendment to the 1989 Order.

VI. COMPLIANCE SCHEDULE FOR FINAL CLOSURE AND POST-CLOSURE CAR-E

8. In lieu of continued compliance with Section IX. GROUND WATER INVESTIGATION WORKPLAN and Section X. RECYCLING AND REMOVAL

WORKPLAN of the 1989 Order, and the plans previously submitted by Defendant pursuant to those Sections of the 1989 Order, which were approved by Ohio EPA, the Defendant is ordered and enjoined to do the following:

A. Within 14 days of the entry of the Amendment to the 1989 Order, the Defendant shall submit an approvable Final Closure/Post-Closure Care Plan in accordance with O.A.C. Rule 3745-29-11, which shall contain the items specified in Paragraph (B) of O.A.C. Rule 3745-29-11, including, but not limited to, the following:

- i. A post-closure care financial assurance instrument and post-closure care cost estimate prepared in accordance with O.A.C. Rules 3745-29-16 and 3745-29-17;
- ii. A Ground Water Monitoring Program prepared in accordance with O.A.C. Rule 3745-29-10. In compliance with the requirements of O.A.C. Rule 3745-29-10, the Ground Water Detection Monitoring Program shall use or include wells, data, and hydrogeological information previously submitted by Defendant to Ohio EPA in accordance with Section IX of the 1989 Order;
- iii. A plan for removal, to the extent not already removed by Defendant as of the date of entry of this Amendment to Consent Order, of all pallets at the Site, such pallets described by Ohio EPA as "solid wastes," as defined by O.A.C. Rule 3745-27-01 (B)(43); and
- iv. A plan for design and installation of modifications to the existing leachate collection storage system that complies with all applicable environmental laws.

B. Within 14 days of the entry of the Amendment to the 1989 Order, the Defendant shall submit a final closure certification report as required by O.A.C. Rule 3745-29-11(J) stating

that all closure activities have been completed at the Facility. Within 7 days of Ohio EPA giving written concurrence of the certification report, the Defendant shall commence performing post-closure care at the Facility for a period of thirty (30) years in accordance with O.A.C. Rule 3745-29-14 and the approved Final Closure/Post-Closure Care Plan.

C. Within 7 days after receipt of approval by Ohio EPA of the Final Closure/Post-Closure Plan, the Defendant shall execute and fund the Post-Closure Care Financial Assurance Instrument as described above;

D. Within 7 days after receipt of approval by Ohio EPA of the Final Closure/Post-Closure Plan, the Defendant shall implement the Ground Water Monitoring Plan for the Facility that is described above;

E. Within 7 days after receipt of approval by Ohio EPA of the plan for removal, to the extent not already removed by Defendant as of the date of entry of this Amendment to Consent Order, of all pallets described by Ohio EPA as “solid wastes” in Paragraph 8.A.iii. above, the Defendant shall implement the plan.

F. Within 7 days after receipt of approval by Ohio EPA of the plan for design and installation of modifications to the existing leachate collection storage system, the Defendant shall implement the plan.

G. Subject to the provisions of Section VIII entitled “PREVIOUSLY COMPLETED CLOSURE ACTIVITIES” below, from the date of the entry of the Amendment to the 1989 Order forward in time, the Defendant shall comply with all provisions of O.A.C. Chapter 3745-29.

H. The parties may, without submitting the matter to the Court for approval,

mutually agree in writing to changes or modifications, as appropriate, to the Final Closure/Post-Closure Care Plan, the Ground Water Monitoring Plan and other documents required for compliance with O.A.C. Chapter 3745-29 as described in this Paragraph 8.

9. The project coordinators specified in Section XII. PROJECT COORDINATORS of the 1989 Consent Order are hereby modified as follows with respect to compliance with this Amendment to the 1989 Order;

Ohio EPA
Group Leader, Division of Solid and Infectious Waste Management
2195 Front Street
Southeast District Office
Logan, Ohio 43138

Defendant

Damon Smith (or his successor)
Manager, Environment and Risk
Commonwealth Aluminum Concast, Inc.
1372 State Road 1957
P.O. Box 480
Lewisport, Kentucky 42351-0480

VII. CLAIMS RESOLVED

10. Compliance with the terms of this Amendment to the 1989 Order shall constitute full satisfaction of any civil or administrative liability of Defendant to the State of Ohio:

- (i) for the claims alleged in the State's Amended Complaint;
- (ii) for any violations of O.A.C. Chapter 3745-29 that occurred prior to the entry of this Amendment to the 1989 Order; and
- (iii) any other environmental claims of which the State of Ohio is aware as of the date

of entry of this Amendment to the 1989 Order.

11. Nothing in this Amendment to the 1989 Order shall be construed to:

(i) limit the **authority** of the State: of Ohio, except as set forth in Paragraph 10, to seek relief for claims or conditions not alleged in the Amended Complaint or addressed by this Amendment to the 1989 Order.

(ii) bar the State of Ohio from bringing any action against the Defendant for any violations that occur after entry of this Amendment to the 1989 Order.

(iii) relieve the parties of their rights and obligations to comply with applicable federal, state, or local statutes, regulations, or ordinances except as set forth in the 1989 Order or this Amendment to the 1989 Order.

(iv) constitute a waiver or release of any right, remedy, defense, or claim against any person not a party to the 1989 Order or this Amendment to the 1989 Order.

(v) limit the State of Ohio from enforcing the 1989 Order or this Amendment to the 1989 Order through a contempt action or otherwise for future violations of the 1989 Order or this Amendment to the 1989 Order.

(vi) limit the State of Ohio from taking any action authorized by law against any person, under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), as amended, 42 U.S.C. § 9601, et seq. and/or Ohio Revised Code Sections 3734.13 and 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 by Defendant pursuant to the terms of this Amendment to the 1989 Order.

(vii) bar any action authorized by law against any person, including Defendant, to

eliminate or mitigate conditions at the Facility which may present an imminent threat to the human health, safety, or the environment.

VIII. PREVIOUSLY COMPLETED CLOSURE ACTIVITIES

12. Notwithstanding any provision in this Amendment to the 1989 Order to the contrary, Defendant shall not be required to redo any closure activities already completed. This includes, and is limited solely to:

(i) installation of a low permeability cap or removal of additional wastes disposed of below said cap;

(ii) placement of an underliner below the waste that is disposed of below the low permeability cap;

(iii) installation of a leachate detection/collection system that is placed under the low permeability cap;

(iv) allowing public notice and comment;

(v) preparation or performance of a test pad on the low permeability cover material;

(vi) revising the vegetative cap cover specifications;

(vii) using a pond system for the purposes of stormwater runoff controls; and

(viii) revising the collection systems for leachate.

13. Notwithstanding Paragraph 12, Defendant is responsible for maintaining and repairing any item related to previously completed closure activities including, but not limited to, the low permeability cap, vegetative cover, the pond system that is used for the purpose of stormwater runoff controls, and the revised leachate collection system.

IX. AUTHORITY TO ENTER INTO AMENDED CONSENT ORDER

14, The signatories for Defendant represent and warrant that they have been duly authorized to sign this documents and so bind Defendant to all terms and conditions thereof.

EFFECTIVE UPON AND ENTERED THIS 14th DAY OF September, 2001.

Edward O'Farrell
9/14/2001
Tuscarawas County Common Pleas Judge

APPROVAL OF COUNSEL ON BEHALF OF THE PARTIES:

STATE OF OHIO, ex rel.
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ATTORNEY GENERAL OF OHIO

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