

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

OHIO E.P.A.

JUL 26 2013

DIRECTOR'S JOURNAL

In the Matter of:

Cyprus Amax Minerals Company
333 North Central Avenue
Phoenix, AZ 85004

and

Chemetall Foote Corp.
348 Holiday Inn Drive
Kings Mountain, NC 28086

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.

By:  Date: 7/26/13

Director's Final
Findings and Orders

Respondents

PREAMBLE

It is hereby agreed to by the Parties as follows:

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to Cyprus Amax Minerals Company, and Chemetall Foote Corp., (collectively "Respondents"), pursuant to the authority vested in the Director of Ohio EPA under Ohio Revised Code ("ORC") §§ 3714.04(A), 3734.02(G), 3734.13 and 3745.01.

II. PARTIES BOUND

These Orders shall apply to and be binding upon Respondents and successors in interest liable under Ohio law. No change in ownership of the Respondents or of the Facility shall in any way alter Respondents' obligations under these Orders.

III. DEFINITIONS

Unless otherwise stated, all terms used in these Orders shall have the same meaning as defined in ORC Chapters 3714 and 3734 and the rules promulgated thereunder.

IV. FINDINGS

All of the findings necessary for the issuance of these Orders pursuant to ORC §§ 3714.04(A), 3734.02(G), 3734.13 and 3745.01 have been made and are outlined below. Nothing in the findings shall be considered to be an admission by Respondent of any issue of law or fact. The Director of Ohio EPA has made the following findings:

1. Pursuant to ORC § 3734.02(G) and rules 3745-27-03(B) and 3745-50-31 of the Ohio Administrative Code (OAC), the Director, by order, may exempt any person generating, collecting, storing, treating, or disposing of solid waste or hazardous waste in such quantities or under such circumstances that, in the determination of the Director, are unlikely to adversely affect the public health or safety or the environment, from any requirement to obtain a permit or comply with other requirements of ORC Chapter 3734. Any such exemption shall be consistent with and equivalent to rules promulgated under the Resource Conservation and Recovery Act of 1976, 90 Stat. 2806, 42 U.S.C. § 6921 et seq., as amended ("RCRA").
2. Pursuant to ORC § 3714.04(A) and OAC rule 3745-400-15(D), the Director may by order exempt any person disposing of or proposing to dispose of construction and demolition debris in such quantities or under such circumstances that, in the determination of the Director, are unlikely to adversely affect the public health or safety or the environment, or to create a fire hazard, from any provision of ORC Chapter 3714 or a rule adopted or order issued under it, other than ORC §§ 3714.03(B)(2) or 3714.13(E).
3. Respondents are persons as defined in ORC §§ 3714.01(H) and 3734.01(G) and OAC rules 3745-27-01(P)(3), 3745-50-10(A), and 3745-400-01(DD).
4. Respondents own the property located at County Road 74, Cross Creek Township, Jefferson County, Ohio (Facility).
5. The Facility consists of approximately 333.5 acres, which includes a former ferro-alloy plant that was formerly owned and operated by Vanadium Corporation of America, and Satralloy, Inc., among others. Additionally, the estate of Catherine Glorious owned this property after all ferro-alloy production operations ceased at the Facility.

6. The ferro-alloy plant was constructed on undeveloped land in 1958 by Vanadium Corporation of America. The ferro-alloy plant consisted of two production (mill) buildings and associated offices, water and waste water treatment facilities, and other miscellaneous buildings. The alloys produced in the plant were made from ores by smelting and refining in electric-arc furnaces. Six (6) electric-arc furnaces were housed in the mill buildings. Molten metals were cast into various shapes and shipped to customers. Based on available information, the electric-arc furnaces at the plant were shut down in approximately 1982.
7. Secondary materials from the production process were moved from the mill buildings to several areas on the Facility. Secondary materials generated at the Facility included: baghouse dust; high-carbon chrome slag; low-carbon chrome slag; sludge generated from the water concentration (reclamation) process; other unidentified materials with high concentrations of metals; and miscellaneous solid waste. These secondary materials contained chromium, cadmium, barium, lead and/or mercury. These secondary materials remain at the Facility. Respondents contend that these materials were exempt from regulation under RCRA pursuant to the Bevill amendment, which amendment was enacted in late 1980.
8. In July 1988, during a time when Respondents did not own or operate the Facility, Ohio EPA conducted a preliminary assessment at the Facility, and identified secondary materials with the potential for heavy metal contamination of surface water and ground water, and open dumping of solid waste.
9. In approximately 1989, the Bevill amendment was narrowed such that many of the types of secondary materials at the Facility would be subject to regulation under RCRA if actively managed. In May 1997, during a time when Jefferson Processing operated the Facility, Ohio EPA conducted a compliance evaluation inspection at the Facility, including sampling of certain secondary materials. It is Ohio EPA's position that certain secondary materials were actively managed. Ohio EPA determined that some of the secondary materials which were actively managed at the Facility exhibited a characteristic of a hazardous waste. Based upon this sampling, Ohio EPA concluded that these secondary materials exhibited a characteristic of a hazardous waste and also that such secondary materials were actively managed. Therefore, Ohio EPA determined that Jefferson Processing had created a hazardous waste management(s) at the Facility.
10. In 1997, Ohio EPA informed Jefferson Processing, the operator of the Facility at the time, of its findings from the inspections referenced in Finding No. 9. of these Orders.
11. Jefferson Processing was generally unresponsive to Ohio EPA.

12. Respondent, Cyprus Amax Minerals Company, purchased the Facility on May 12, 2010.
13. On November 3, 2010, Respondents entered into a Consent Order for Preliminary Injunction (COPI) with the State of Ohio to conduct a remedial investigation and feasibility study in order to generally address any immediate human health and environmental threats at the Facility as well as collect information for a final remedy for the Facility. The COPI also includes the requirement to submit an Interim Action Work Plan (IA Work Plan) and a Remedial Investigation and Feasibility Study Work Plan (RI/FS Work Plan) to Ohio EPA for approval.
14. On December 20, 2010, Respondents submitted the initial IA Work Plan and RI/FS Work Plan to Ohio EPA. Within the IA Work Plan and RI/FS Work Plan, Respondents described activities that will take place at the Facility. Some of these activities would include moving, consolidating, and staging solid waste, construction and demolition debris, and both Bevill-exempt materials located at the Facility and certain secondary materials which exhibit a characteristic of a hazardous waste, including some secondary materials that were actively managed by Jefferson Processing. By letter dated April 5, 2013, the RI/FS Work Plan was approved by the Ohio EPA. By letter dated April 25, 2013, the IA Work Plan was approved by Ohio EPA. The April 25, 2013 approval included certain conditions.
15. The version of the IA Work Plan dated November 12, 2012 is deemed to be an application by Respondents for an exemption, pursuant to ORC § 3734.02(G) and OAC rule 3745-50-31, excluding their proposed remedial activities from regulation under the hazardous waste requirements pursuant to ORC Chapter 3734. and the rules promulgated thereunder, as well as the State's laws and rules regarding the open dumping of solid waste and illegal disposal of construction and demolition debris. The IA Work Plan describes the proposed methods for managing materials at the Facility and stated that specified activities at the Facility would be performed within an Area of Contamination designated for the Site. The Area of Contamination Policy is guidance issued by US EPA. By letter dated October 19, 2012, Ohio EPA concurred with Respondents that the AOC concept was applicable to the Facility.
16. The approval by Ohio EPA of the RI/FS Work Plan and the IA Work Plan and in concert with the provisions of the Area of Contamination Policy, in lieu of compliance with the hazardous waste requirements pursuant to ORC Chapter 3734. and the rules promulgated thereunder during the on-site implementation of the IA Work Plan and RI/FS Work Plan, is unlikely to adversely affect the public health or safety or the environment. Therefore, the Director finds that the

issuance to Respondents of an exemption from the requirements to comply with the hazardous waste requirements under ORC Chapter 3734. and the rules promulgated thereunder during the on-site implementation of the IA Work Plan and the RI/FS Work Plan is unlikely to adversely affect the public health or safety or the environment within the meaning of ORC § 3734.02(G) and is consistent with and equivalent to rules promulgated under the Resource Conservation and Recovery Act of 1976, 90 Stat. 2806, 42 U.S.C. § 6921 et seq., as amended, as long as Respondents comply with the approved Interim Action Work Plan and RI/FS Work Plan.

17. Pursuant to ORC § 3714.01(C), construction and demolition debris includes those materials resulting from the destruction of any physical structure that is built by humans. "Construction and demolition debris does not include materials identified or listed as solid wastes or hazardous waste pursuant to Chapter 3734 of the Revised Code and rules adopted under it . . . or reinforced or nonreinforced concrete, asphalt, building or paving brick, or building or paving stone that is stored for a period of less than two years for recycling into a usable construction material."
18. OAC rule 3745-400-01(E) states that "clean hard fill" is construction and demolition debris that consists only of reinforced or nonreinforced concrete, asphalt, concrete, brick, block, tile or stone that can be reused as a construction material. Clean hard fill does not include materials contaminated with hazardous waste, solid waste, or infectious waste. OAC rule 3745-400-05(B) provides that "[c]lean hard fill may be stored for a period of less than two years. . . . Clean hard fill stored more than two years shall be considered illegal disposal of construction and demolition debris."
19. OAC rule 3745-400-01(S) generally provides that "illegal disposal" means the disposal of construction and demolition debris at any place other than a licensed construction and demolition debris disposal facility, a licensed solid waste disposal facility, or as otherwise authorized by OAC Chapter 3714.
20. Pursuant to OAC rule 3745-400-04(B), no person shall conduct or allow illegal disposal of construction and demolition debris.
21. ORC § 3734.01(E) states that solid waste means "unwanted residual solid or semisolid material as results from industrial, commercial, agricultural, and community operations, excluding earth or material from construction, mining, or demolition operations . . . and slag and other substances that are not harmful or inimical to public health[.]" That section also provides that solid waste does not include any material that is a hazardous waste.

22. Pursuant to ORC § 3734.01(I), "Open dumping" includes the depositing of solid wastes onto the surface of the ground at a site that is not licensed as a solid waste facility under section 3734.05 of the Revised Code.
23. Pursuant to ORC § 3734.03, no person shall dispose of solid wastes by open dumping.
24. OAC rule 3745-27-03(A) provides that the temporary storage of solid waste other than scrap tires is generally exempt from regulation under OAC Chapter 3745-27. If, however, the storage of the solid waste causes a nuisance or health hazard, it shall be considered open dumping.
25. OAC rule 3745-27-05(C) provides that "[n]o person shall conduct, permit, or allow open dumping. In the event that open dumping is occurring or has occurred at a property, the person(s) responsible for the open dumping, the owner of the property, or the person(s) who allow or allowed open dumping to occur, shall promptly remove and dispose or otherwise manage the solid waste in accordance with Chapter 3734, of the Revised Code, and shall submit verification that the solid waste has been properly managed."
26. The IA Work Plan includes the destruction of structures at the Facility. This activity will result in the generation of solid wastes and construction and demolition debris. Respondents propose to store those materials within the Area of Contamination at the Facility during the implementation of the approved RI/FS Work Plan and the approved IA Work Plan, until a final remedy has been approved for the Facility.
27. The version of the IA plan dated November 12, 2012 is deemed to be an application by Respondents for an exemption pursuant to ORC §§ 3714.04(A) and 3734.02(G), exempting Respondents' proposed remedial activities during the implementation of the approved RI/FS Work Plan and the approved IA Work Plan from regulation under ORC § 3734.03 and OAC rules 3745-27-05(C) and 3745-400-04(B) until a final remedy has been approved for the Facility.
28. The Director finds that the issuance to Respondents of an exemption from the requirements to comply with ORC Chapters 3714 and 3734 and the rules promulgated thereunder during the implementation of the approved RI/FS Work Plan and the approved IA Work Plan at the Facility is unlikely to adversely affect the public health or safety or the environment, or to create a fire hazard, as long as Respondents comply with the approved Interim Action Work Plan, the approved RI/FS Work Plan, and these Orders.

V. ORDERS

Respondents shall proceed with the implementation of the IA Work Plan and the RI/FS Work Plan according to the following terms:

1. The Respondents are hereby exempted from the requirement to comply with hazardous waste requirements pursuant to ORC Chapter 3734, and the rules promulgated thereunder for the implementation of the IA Work Plan and the RI/FS Work Plan at the Facility, provided that Respondents comply with the following:
 - a. Only the wastes currently located at the Facility may be managed within the Area of Contamination;
 - b. Manage the secondary materials that were specifically designated as Jefferson Processing piles pursuant to Section 1.2.2 of the approved IA Work Plan; and
 - c. No other hazardous wastes generated off-site nor any newly generated process waste may be managed at the Facility in accordance with this Order.
2. The Respondents are hereby exempted from the requirements in ORC Chapters 3714 and 3734 and OAC Chapters 3745-27 and 3745-400 governing the management of solid waste or construction and demolition debris, other than solid waste or construction and demolition debris that constitutes asbestos or asbestos containing material, during the implementation of the approved RI/FS Work Plan and the approved IA Work Plan provided that the Respondents comply with the following:
 - a. Only solid waste and construction and demolition debris located at the Facility on the effective date of these Orders and/or generated at the Facility as a result of the destruction of structures conducted in accordance with the approved IA Work Plan may be managed in accordance with this Order; and
 - b. All materials managed in accordance with this Order shall be managed in accordance with the approved IA Work Plan.
3. Notwithstanding Section VI of these Orders, the Director may revoke any of the exemptions granted in Section V of these Orders should the Director determine that Respondents' activities at the Facility adversely affect public health or safety or the environment, create a fire hazard, and/or are not being conducted in accordance with these Orders and/or the approved IA Work Plan and RI/FS Work Plan.

VI. TERMINATION

Respondents may request termination of these Orders when Respondents certify in writing and demonstrate to the satisfaction of Ohio EPA that Respondents have performed all obligations under these Orders and Ohio EPA acknowledges, in writing, the termination of 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: "I certify that the information contained in or accompanying this certification is true, accurate and complete."

This certification shall be submitted by Respondents to Ohio EPA and shall be signed by a responsible official(s) of Respondents. For purposes of these Orders, a responsible official is a corporate officer who is in charge of a principal business function of Respondents.

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, the operation of Respondents' Facility.

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 Respondents.

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 Ohio EPA.

X. NOTICE

All documents required to be submitted by Respondents pursuant to these Orders shall be addressed to:

Cyprus Amax Minerals Company and
Chemetall Foote Corp.
Director's Final Findings and Orders
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Ohio Environmental Protection Agency
Southeast District Office
Division of Materials and Waste Management
2195 Front Street
Logan, Ohio 43138
Attn: DMWM Manager

and Ohio EPA Central Office at the following addresses:

For mailings, use the post office box number:

Scott J. Nally, Director
Ohio Environmental Protection Agency
Lazarus Government Center
Division of Materials and Waste Management
P.O. Box 1049
Columbus, Ohio 43216-1049
Attn: Manager, Compliance Assurance Section

For deliveries to the building:

Scott J. Nally, Director
Ohio Environmental Protection Agency
Lazarus Government Center
Division of Materials and Waste Management
50 West Town Street, Columbus, Ohio 43215
Attn: Manager, Compliance Assurance Section

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

All documents required to be submitted by Ohio EPA pursuant to these Orders shall be
addressed to:

Barbara K. Nielsen
Manager, Remediation Projects
Freeport - McMoRan Copper & Gold
333 North Central Avenue
Phoenix, Arizona 85004

and:

J. Stanton Curry, Esq.
James D. Lynch, Esq.
Gallagher & Kennedy P.A.
2575 East Camelback Road
Phoenix, Arizona 85016-9225

and:
Shane A. Farolino, Esq.
Roetzel & Andress
222 South Main Street, Suite 400
Akron, Ohio 44308

and:

Ken Brown
Chemetall Foote Corp.
348 Holiday Inn Drive
Kings Mountain, North Carolina 28086

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

XI. RESERVATION OF RIGHTS

Ohio EPA and Respondents each reserve all rights, privileges, defenses 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 law, fact, violation or liability, and in lieu of further enforcement by Ohio EPA for only the matters specifically cited in these Orders, Respondents consent to the issuance of these Orders and agree to comply with these Orders. Compliance with these Orders shall be a full accord and satisfaction for Respondents' liability for the violations specifically cited herein.

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

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

such appeal and intervention unless these Orders are stayed, vacated or modified.

XIII. EFFECTIVE DATE

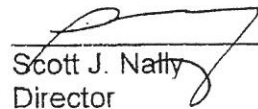
The effective date of these Orders is the date these Orders are entered into the Ohio EPA Director's journal.

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



Scott J. Nally
Director

7/20/13

Date

IT IS SO AGREED:

Cyprus Amax Minerals Company

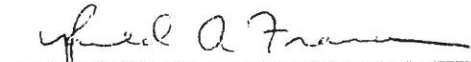
Signature

Printed or Typed Name

Title

Date

Chemetall Foote Corp.



Signature
Ronald A France

Printed or Typed Name
Chief Financial Officer

Title

July 25, 2013

Date

such appeal and intervention unless these Orders are stayed, 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



Scott J. Nally
Director

7/26/13

Date

IT IS SO AGREED:

Cyprus Amax Minerals Company



Signature

7/22/13

Date

William E. Corbin

Printed or Typed Name

Vice President

Title

Chemetall Foote Corp.

Signature

Date

Printed or Typed Name

Title