

IN THE COURT OF COMMON PLEAS
~~GUERNSEY~~ COUNTY, OHIO

GUERNSEY

FILED
COMMON PLEAS COURT
2004 OCT 28 PM 12:15

TERESA A. DANKOVIC
CLERK OF COURTS
GUERNSEY CO., OHIO

STATE OF OHIO, ex rel.,
JIM PETRO,
ATTORNEY GENERAL OF OHIO,

CASE NO. CV 95 242
JUDGE DAVID ELLWOOD

Plaintiff,

v.

SHIELDALLOY METALLURGICAL
CORPORATION et al.

Defendants.

**Addendum to the Permanent Injunction Consent Order Filed July 24, 1997,
Settlement of Written Charges in Contempt Filed September 20, 2002, and
Settlement of Defendants' Dispute of the State's Response Costs for 2003**

Whereas Plaintiff, State of Ohio, ex rel. Jim Petro, Attorney General of Ohio ("Plaintiff"), having filed the Motion for Contempt on September 20, 2002 ("Contempt Charges") against Defendant Shieldalloy Metallurgical Corporation ("Defendant Shieldalloy") to enforce hazardous waste and water pollution laws found in Ohio Revised Code ("R.C.") Chapters 3734 and 6111 of the Revised Code and the rules adopted thereunder; and

Whereas, after an evidentiary hearing on April 2 and 3, 2003, this Court dismissed the Contempt Charges, which dismissal was reversed and remanded by the Guernsey County, Ohio Court of Appeals. Upon remand, this Court again dismissed the Contempt Charges on April 12, 2004 and Plaintiff appealed that decision to the Guernsey County, Ohio Court of Appeals; and

Whereas, the parties wish to resolve this dispute and avoid any further disputes regarding the Contempt Charges; and

Whereas, Plaintiff agrees to the dismissal with prejudice of the Contempt Charges; and

Whereas, Defendant Shieldalloy and Defendant Cyprus Foote Mineral Company (“Defendant Cyprus Foote”) do not admit to the allegations set forth in the Contempt Charges and deny any violation of any state or federal statute, regulation or common law; and

Whereas, Defendant Shieldalloy, and Defendant Cyprus Foote having consented to the entry of this addendum (“Addendum Order”) to the existing Permanent Injunction Consent Order (“PICO”) filed on July 24, 1997;

Now, therefore, without admission of any law or fact, and upon the consent of the parties hereto, it is hereby ORDERED, ADJUDGED, and DECREED as follows:

I. JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of this action, pursuant to R.C. Chapters 3734 and 6111 and the rules adopted thereunder. This Court has jurisdiction over the parties. Venue is proper in this Court.

II. PERSONS BOUND

2. The provisions of this Addendum Order shall apply to and be binding upon Plaintiff, Defendant Shieldalloy, and Defendant Cyprus Foote, their agents, officers, employees, assigns, successors in interest and any person acting in concert or participation with them who receives actual notice of this Addendum Order whether by personal service or otherwise.

III. DISMISSAL OF CONTEMPT CHARGES AND RESERVATION OF RIGHTS

3. In consideration of Defendants full compliance with this Addendum Order, Plaintiff has agreed to dismissal of the Contempt Charges with prejudice.

4. Nothing in this Addendum Order shall limit the authority of the State of Ohio to:

- A. Seek relief for claims or conditions not alleged in the Contempt Charges;
- B. Seek relief for claims or conditions alleged in the Contempt Charges that arise after the entry of this Addendum Order;
- C. Enforce this Addendum Order and/or the PICO through a contempt action or otherwise for violations of this Addendum Order and/or the PICO;
- D. Seek relief for claims or conditions as set forth in Section XXX Satisfaction of Lawsuit and/or Section XXXII Reservation of Rights of the PICO;
- E. Take any action authorized by law against any person, including Defendant Shieldalloy and Defendant Cyprus Foote, to eliminate or mitigate conditions at its facility that may present an imminent threat to the public health or welfare, or the environment.

IV. INJUNCTION REGARDING OHIO EPA'S IMPOSITION OF INDIRECT COSTS

5. Defendant Shieldalloy and Defendant Cyprus Foote are ordered and enjoined to pay the State's current and future Response Costs required by the PICO in accordance with the following provision:

For all itemized statements of the State of Ohio's Response Costs starting in 2003 and continuing until the termination of the Permanent Injunction Consent Order ("PICO") filed July 24, 1997, Ohio EPA's indirect costs will be calculated using the administrative cost recovery methodology set forth in Appendix A to this Addendum Order. Defendants agree to Ohio EPA's use of this administrative cost recovery methodology to calculate Ohio EPA's indirect costs, and Defendants shall not dispute the use of this administrative cost recovery methodology by raising any defense, including but not limited to a defense that the administrative cost recovery methodology is illegal rulemaking in violation of R.C. Chapter 119. Provided however, as set forth in paragraph 61 of the PICO, Defendants reserve the right to dispute the accuracy of such indirect costs and/or whether the costs are not inconsistent with the National Contingency Plan ("NCP").

V. PAYMENT OF PAST RESPONSE COSTS

6. Defendant Shieldalloy and Defendant Cyprus Foote are ordered and enjoined to pay a total of Seventy-Seven Thousand, Four Hundred Sixty-Four Dollars, Fifty-Three Cents (\$77,464.53) as reimbursement for past Response Costs incurred by the State of Ohio through 2003. This amount includes unpaid Response Costs of \$33,089.66 for the years 1999 through 2001, and unpaid Response Costs of \$44,374.87 for the years 2002 and 2003.

7. The \$77,464.53 amount shall be paid to Plaintiff by delivering cashiers' or certified checks payable to "Treasurer, State of Ohio" to the Fiscal Officer, Ohio EPA, P.O. Box 1049, Columbus, Ohio 43216-1049 pursuant to the following payment schedule:

- a \$38,732.27 payment within thirty (30) days of entry of the Addendum Order as provided in paragraph 11, and
- a \$38,732.26 payment not later than December 31, 2004.

Defendants shall send a copy of the transmittal letters and a copies of the checks to:

Fiscal Officer, DERR, Ohio EPA, P.O. Box 1049, Columbus, Ohio 43216-1049, ATTN:

Steven Snyder or his successor; to the Ohio EPA Site Coordinator, Kevin O'Hara or his successor, at Southeast District Office, 2195 Front Street, Logan, Ohio 44087; and to the Assistant Attorney General representing the State in this matter at Office of the Attorney General, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215-3400.

VI. RESOLUTION OF DEFENDANTS DISPUTE OF THE STATE'S 2002 AND 2003 RESPONSE COSTS

8. As set forth in paragraph 6 above, Defendants are ordered and enjoined to pay the Response Costs incurred by the State of Ohio through 2003. This payment includes the 2002 and 2003 Response Costs Defendant Shieldalloy has disputed as provided by Section XXVIII. DISPUTE RESOLUTION of the PICO. The dispute regarding the 2002 and 2003 Response Costs is therefore resolved and dismissed as moot upon entry of this Addendum Order.

VII. 1997 PERMANENT INJUNCTION CONSENT ORDER REMAINS IN EFFECT

9. Unless modified by the provisions of this Addendum Order, the provisions of the PICO remain in effect.

VIII. RETENTION OF JURISDICTION

10. This Court shall retain jurisdiction of this action for the purpose of enforcing this Addendum Order.

IX. ENTRY OF ADDENDUM ORDER AND JUDGMENT BY CLERK

11. Upon signing of this Addendum Order by the Court, the clerk is directed to enter it upon the journal. Within three (3) days of entering the judgment upon the journal, the clerk is directed to serve upon all parties notice of the judgment and its date

of entry upon the journal in the manner prescribed by Rule 5(B) of the Ohio Rules of Civil Procedure and note the service in the appearance docket.

XIX. AUTHORITY TO ENTER INTO THE ADDENDUM ORDER

12. Each signatory for a corporation represents and warrants that he/she has been duly authorized to sign this document and so bind the corporation to all terms and conditions thereof, and that he/she submits with this Addendum Order an authenticated and certified resolution from the corporation establishing that he/she is so empowered.

IT IS SO ORDERED:

10-28th - 2004
DATE

David A. Ellwood
JUDGE ELLWOOD
GUERNSEY COUNTY
COURT OF COMMON PLEAS

**JIM PETRO
ATTORNEY GENERAL
OF OHIO**

Shieldalloy Metallurgical Company

By:

Timothy Kern
Timothy Kern (0034629)
Assistant Attorney General
Environmental Enforcement Section
30 East Broad Street, 25th Floor
Columbus, Ohio 43215-3400
(614) 466-2766

Attorney for Plaintiff
State of Ohio

By:

Hoy E. Frakes, Jr.
Hoy E. Frakes, Jr.

Title: Senior Vice President and
General Manager

Address: P.O. Box 310
Cambridge, OH 43725-1310

Dated: 28 Oct 04

Vorys, Sater, Seymour and Pease LLP

Cyprus Foote Mineral Company



Richard P. Fahey (0013131)
52 East Gay Street; P.O. Box 1008
Columbus, Ohio 43216-1008
(614) 464-6400

Attorney for Defendant
Shieldalloy Metallurgical Company

Dated: 10/28/04

By:


Ronald A. France

Title: _____
President & CFO
Chemetall Foote Corp
Address: 348 Holiday Inn Drive

Kings Mountain,

North Carolina 28086

APPENDIX A

REMEDIAL RESPONSE ADMINISTRATIVE COST RATE METHODOLOGY

This methodology reflects an hourly billing rate for administrative costs associated with the Remedial Response Program. The rate is applied to every staff hour charged directly to a site by an environmental specialist staff member. The administrative cost recovery will be calculated based on total site hours logged by the personnel in the previous fiscal year. As an example, the Fiscal Year 2001 rate is calculated below:

Administrative Costs

Division Administration	\$2,015,489
Equipment Depreciation Charge	<u>132,099</u>
Total Administrative Costs	\$2,147,588
FY 2001 Site Specific Hours	57,839.50 Chargeable Hours

Administrative Cost Recovery Rate (Costs/Hours)

$$\frac{\text{Total Administrative Costs}}{\text{Site Specific Hours}} = \frac{\$2,147,588}{57,839.50 \text{ Hr.}} = \$37.13 \text{ Per Hour}$$

The administrative cost recovery rate means that for every one hour of staff time logged to a site, per the above example, \$37.13 per hour would be added for administrative costs. Since the total administrative costs and site specific hours vary from year to year, the hourly administrative cost rate will be adjusted according to the costs and hours for each year. However, the methodology for calculating the administrative cost rate remains the same. In addition, direct costs such as salaries, fringe benefits, and contracted services associated with a site are not included in the calculation. However, these costs are included in the total billing to a site. A billing to a site might be as follows:

EXAMPLE

Employee site specific hours	=	10.00 hours
Salaries and Fringe Benefits hourly rate	=	\$20.00 per hour
Staff direct site hours x hourly rate		\$ 200.00
Administrative costs (10 hours x 37.13/hour)		371.30
Other direct costs (i.e., contracted services)		<u>100.00</u>
Total Site Billing		\$ 671.30

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JIM PETRO :
ATTORNEY GENERAL OF OHIO, : JUDGE DAVID A. ELLWOOD
 :
Plaintiff, :
 :
vs. :
 :
SHIELDALLOY METALLURGICAL :
CORPORATION et. al. :
 :
Defendant. :

**Incorporation of Original Signature Page to Addendum to the Permanent Injunction
Consent Order**

The Addendum to the Permanent Injunction Consent Order (“Addendum”) was signed by Judge David A. Ellwood and filed on October 28, 2004. The Addendum was signed by all the Parties, but the signature for Cyprus Foote Mineral Company was a facsimile copy. The original signature for Cyprus Foote Mineral Company is attached herein. The Parties request that the Clerk’s Office attach this original signature page to the filed Addendum.

Respectfully submitted,

**JIM PETRO
ATTORNEY GENERAL OF OHIO**


TIMOTHY J. KERN (0034629)
Assistant Attorney General
Environmental Enforcement Section
Public Protection Division
30 East Broad Street, 25th Floor
Columbus, Ohio 43215-3428
Telephone: (614) 466-2766

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing **Incorporation of Original Signature Page** has been served by ordinary U.S. mail, postage prepaid, this 4th day of November, 2004, upon the following:

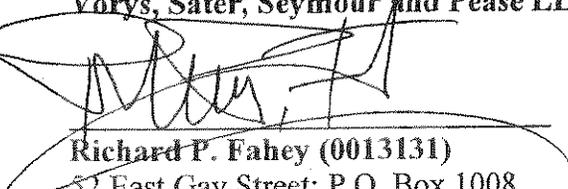
Richard Fahey, Esq.
Vorys, Sater, Seymour and Pease LLP
52 East Gay Street
P.O. Box 1008
Columbus, Ohio 43216-1008

Ronald A. France
President & CEO
Chemetall Foote Corp.
348 Holiday Inn Drive
Kings Mountain, North Carolina 28086



TIMOTHY J. KERN
Assistant Attorney General

Vorys, Sater, Seymour and Pease LLP

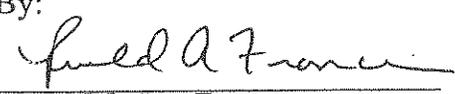

Richard P. Fahey (0013131)
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Columbus, Ohio 43216-1008
(614) 464-6400

Attorney for Defendant
Shieldalloy Metallurgical Company

Dated: 10/28/04

Cyprus Foote Mineral Company

By:


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Title: _____

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