ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT

IN THE MATTER OF:	)	
	)	
Globe Metallurgical, Inc.	)	CONSENT ORDER NO.
Selma, Dallas County, Alabama	)	
	)	
Air Facility ID No. 104-0001	)	

PREAMBLE

This Special Order by Consent is made and entered into by the Alabama Department of Environmental Management (hereinafter "the Department") and Globe Metallurgical, Inc. (hereinafter, the "Permittee") pursuant to the provisions of the Alabama Environmental Management Act, Ala. Code §§ 22-22A-1 to 22-22A-16 (2006 Rplc. Vol.), the Alabama Air Pollution Control Act, §§ 22-28-1 to 22-28-23, Ala. Code (2006 Rplc. Vol.), and the regulations promulgated pursuant thereto.

STIPULATIONS

1. The Permittee operates a silicon metal manufacturing facility (Air Facility ID No. 104-0001) in Selma, Dallas County, Alabama.

2. The Department is a duly constituted department of the State of Alabama pursuant to §§ 22-22A-1 to 22-22A-16 (2006 Rplc. Vol.).

3. Pursuant to § 22-22A-4(n), Ala. Code (2006 Rplc. Vol.), the Department is the state air pollution control agency for the purposes of the federal Clean Air Act, 42 U.S.C. 7401 to 7671q, as amended. In addition, the Department is authorized to administer and enforce the provisions of the Alabama Air Pollution Control Act, §§ 22-28-1 to 22-28-23, Ala. Code (2006 Rplc. Vol.).

4. The Permittee operates under the authority of Major Source Operating Permit No. 104-0001 (hereinafter, "the Permit"), which was issued to it on July 28, 2005 by the Department.

5. Permit General Proviso No. 29, Visible Emissions, states:

> Unless otherwise specified in the Unit Specific provisos of this permit, any source of particulate emissions shall not discharge more than one 6-minute average opacity greater than 20% in any 60-minute period. At no time shall any source discharge a 6-minute average opacity of particulate emissions greater than 40%. Opacity will be determined by 40 CFR Part 60, Appendix A, Method 9, unless otherwise specified in the Unit Specific provisos of this permit.

6. Permit General Proviso No. 15(b), Equipment Maintenance or Breakdown, states:

> In the event that there is a breakdown of equipment or upset of process in such a manner as to cause, or is expected to cause, increased emissions of air contaminants which are above an applicable standard, the person responsible for such equipment shall notify the Director within 24 hours or the next working day and provide a statement giving all pertinent facts, including the estimated duration of the breakdown. The Director will be notified when the breakdown has been corrected.

7. Permit General Proviso No. 21(b), Reporting Requirements, states:

> Deviations from permit requirements shall be reported within 48 hours or 2 working days of such deviations, including those attributable to upset conditions as defined in the permit. The report will include the probable cause of said deviations, and any corrective actions or preventive measures that were taken.

DEPARTMENT'S CONTENTIONS

8. On January 7, 2008, the Department received from the Permittee via e-mail results of a United States Environmental Protection Agency Reference Method 9 visible emission test (hereinafter, "Method 9 V.E. Test) that the Permittee conducted on January 4, 2008 on Emission Point 002 (Submerged Arc (20MW) No. 2 and Associated Tapping Operation with Cyclone and Baghouse). The test results showed more than one six-minute average opacity reading greater than 20% in any sixty minute period, in violation of Permit Proviso No. 29.

9. On February 1, 2008, the Department issued a Notice of Violation (NOV) to the Permittee for a Method 9 V.E. Test failure.

10. On February 13, 2008, the Department received a response to the February 1, 2008 NOV from the Permittee stating that bag failure was the cause of the excess particulate emissions that were observed from the baghouse.

11. The Department received from the Permittee via e-mail results of Method 9 V.E. Tests that the Permittee conducted on Emission Point 001 (Submerged Arc (20MW) No. 1 and Associated Tapping Operation with Cyclone and Baghouse). The test results for each test showed more than one six-minute average opacity reading greater than 20% in any sixty minute period, in violation of Permit Proviso No. 29. The date each e-mail was received, the date each test was conducted, and the greatest six minute average opacity observed during each test are shown below:

Date E-mail Received	**Date Test Conducted**	**Highest Observed Opacity**
May 12, 2010	May 12, 2010	25%
May 18, 2010	May 17, 2010	21%
June 1, 2010	May 24, 2010	33%
June 23, 2010	June 21, 2010	26%
July 9, 2010	July 7, 2010	33%
July 21, 2010	July 19, 2010	31%
August 16, 2010	August 13, 2010	29%

12. On June 1, 2010, the Department received from the Permittee via e-mail deviations experienced on Baghouse No. 2. On May 25, 2010 Baghouse No. 2 experienced a temperature deviation, and on May 26, 2010 Baghouse No. 2 experienced a pressure deviation.

13. On July 13, 2010, the Department issued a Notice NOV to the Permittee for multiple Method 9 V.E. Test failures and failure to report deviations within 48 hours or 2 working days, in violation of Permit Proviso Nos. 29, 15(b), and 21(b).

14. On August 9, 2010, the Department received a response to the July 13, 2010, NOV from the Permittee stating that bag failure was the cause of excess particulate emissions that were observed from the baghouse.

15. Pursuant to Ala. Code § 22-22A-5(18)c (2006 Rplc. Vol.), in determining the amount of any penalty, the Department must give consideration to the seriousness of the violation(s), including any irreparable harm to the environment and any threat to the health or safety of the public; the standard of care manifested by such person; the economic benefit which delayed compliance may confer upon such person; the nature, extent and degree of success of such person's efforts to minimize or mitigate the effects of such violation upon the environment; such person's history of previous violations; and the ability of such person to pay such penalty. Any civil penalty assessed pursuant to this authority shall not be less than $100.00 or exceed $25,000.00 for each violation, provided however, that the total penalty assessed in an order issued by the Department shall not exceed $250,000.00. Each day such violation continues shall constitute a separate violation. In arriving at this civil penalty, the Department has considered the following.

A. SERIOUSNESS OF THE VIOLATION: The increased visible emissions are an indication of increased Particulate Matter emissions. While there was an indication of increased Particulate Matter, the Department is not aware of any irreparable harm to the environment resulting from these violations. No harm to the environment is expected due to the reporting violation.

B. THE STANDARD OF CARE: By not maintaining the control equipment as to minimize the emissions of air contaminants, the facility failed to exhibit a sufficient standard of care.

C. ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED: By not halting or reducing production during times of opacity exceedances, profits could have been realized from the sale of those products.

D. EFFORTS TO MINIMIZE OR MITIGATE THE EFFECTS OF THE VIOLATION UPON THE ENVIRONMENT: After each failed Method 9 V.E. Test the Permittee isolated baghouse compartments and began changing bags.

E. HISTORY OF PREVIOUS VIOLATIONS: Since 1990, the Permittee has been issued ten Warning Letters, twelve Notices of Violation, and two Consent Orders. Five Warning Letters, seven Notices of Violation, and two Consent Orders have been issued to the Permittee on similar issues as the violations detailed in this Consent Order.

F. THE ABILITY TO PAY: The Permittee has not alleged an inability to pay the civil penalty.

G. OTHER FACTORS: It should be noted that this Special Order by Consent is a negotiated settlement and, therefore, the Department has compromised the amount of the penalty it believes is warranted in this matter in the spirit of cooperation and the desire to resolve this matter amicably, without incurring the unwarranted expense of litigation.

16. The Department has carefully considered the six statutory penalty factors enumerated in Ala. Code § 22-22A-5(18)c (2006 Rplc. Vol.), as well as the need for timely and effective enforcement and, based upon the foregoing and attached contentions, has concluded that the civil penalty herein is appropriate and consistent with the historical penalty range imposed by the Department for similar violations (see Attachment A, which is made a part of Department's contentions).

17. The Department neither admits nor denies Permittee's contentions, which are set forth below. The Department has agreed to the terms of this Consent Order in an effort to resolve the alleged violations cited herein without the unwarranted expenditure of State resources in

further prosecuting the above violations. The Department has determined that the terms contemplated in this Consent Order are in the best interests of the citizens of Alabama.

PERMITTEE'S CONTENTIONS

18. Permittee neither admits nor denies the Department's contentions. Permitee consents to abide by the terms of this Consent Order and to pay the civil penalty assessed herein. As such, this Consent Order shall not be deemed or construed at any time for any purpose by anyone (including but not limited to other parties who bring claims in any legal, administrative or other proceeding) as an admission by Permittee of liability.

ORDER

THEREFORE, the Permittee, along with the Department, desires to resolve and settle the compliance issues cited above. The Department has carefully considered the facts available to it and has considered the six penalty factors enumerated in Ala. Code § 22-22A-5(18)c(2006 Rplc. Vol.), as well as the need for timely and effective enforcement, and the Department believes that the following conditions are appropriate to address the violations alleged herein. Therefore, the Department and the Permittee agree to enter into this Consent Order with the following terms and conditions:

A. The Permittee agrees to pay to the Department a civil penalty in the amount of $35,000 in settlement of the violations alleged herein within forty-five days from the effective date of this Consent Order. Failure to pay the civil penalty within forty-five days from the effective date may result in the Department's filing a civil action in the Circuit Court of Montgomery County to recover the civil penalty.

B. The Permittee agrees that all penalties due pursuant to this Consent Order shall be made payable to the Alabama Department of Environmental Management by certified or cashier's check and shall be remitted to:

Office of General Counsel
Alabama Department of Environmental Management
P.O. Box 301463

Montgomery, Alabama 36130-1463

C. The Permittee agrees to comply with all requirements of ADEM Administrative Code div. 335-3 and the Permit immediately upon the effective date of this Order and continuing each and every day thereafter.

D. The parties agree that this Consent Order shall apply to and be binding upon both parties, their directors, officers, and all persons or entities acting under or for them. Each signatory to this Consent Order certifies that he or she is fully authorized by the party he or she represents to enter into the terms and conditions of this Consent Order, to execute the Consent Order on behalf of the party represented, and to legally bind such party.

E. The parties agree that, subject to the terms of these presents and subject to provisions otherwise provided by statute, this Consent Order is intended to operate as a full resolution of the violations which are cited in this Consent Order.

F. The Permittee agrees that it is not relieved from any liability if it fails to comply with any provision of this Consent Order.

G. For purposes of this Consent Order only, the Permittee agrees that the Department may properly bring an action to compel compliance with the terms and conditions contained herein in the Circuit Court of Montgomery County. The Permittee also agrees that in any action brought by the Department to compel compliance with the terms of this Agreement, the Permittee shall be limited to the defenses of *Force Majeure*, compliance with this Agreement and physical impossibility. A *Force Majeure* is defined as any event arising from causes that are not foreseeable and are beyond the reasonable control of the Permittee, including its contractors and consultants, which could not be overcome by due diligence (i.e., causes which could have been overcome or avoided by the exercise of due diligence will not be considered to have been beyond the reasonable control of the Permittee) and which delays or prevents performance by a date required by the Consent Order. Events such as unanticipated or increased costs of performance, changed economic circumstances, normal precipitation events, or failure to obtain

federal, state, or local permits shall not constitute *Force Majeure*. Any request for a modification of a deadline must be accompanied by the reasons (including documentation) for each extension and the proposed extension time. This information shall be submitted to the Department a minimum of ten working days prior to the original anticipated completion date. If the Department, after review of the extension request, finds the work was delayed because of conditions beyond the control and without the fault of the Permittee, the Department may extend the time as justified by the circumstances. The Department may also grant any other additional time extension as justified by the circumstances, but it is not obligated to do so.

H. The Department and the Permittee agree that the sole purpose of this Consent Order is to resolve and dispose of all allegations and contentions stated herein concerning the factual circumstances referenced herein. Should additional facts and circumstances be discovered in the future concerning the facility which would constitute possible violations not addressed in this Consent Order, then such future violations may be addressed in Orders as may be issued by the Director, litigation initiated by the Department, or such other enforcement action as may be appropriate, and the Permittee shall not object to such future orders, litigation or enforcement action based on the issuance of this Consent Order if future orders, litigation or other enforcement action address new matters not raised in this Consent Order.

I. The Department and the Permittee agree that this Consent Order shall be considered final and effective immediately upon signature of all parties. This Consent Order shall not be appealable, and the Permittee does hereby waive any hearing on the terms and conditions of same.

J. The Department and the Permittee agree that this Order shall not affect the Permittee's obligation to comply with any Federal, State, or local laws or regulations.

K. The Department and the Permittee agree that final approval and entry into this Order are subject to the requirements that the Department give notice of proposed Orders to the public, and that the public have at least thirty days within which to comment on the Order.

L. The Department and the Permittee agree that, should any provision of this Order be declared by a court of competent jurisdiction or the Environmental Management Commission to be inconsistent with Federal or State law and therefore unenforceable, the remaining provisions hereof shall remain in full force and effect.

M. The Department and the Permittee agree that any modifications of this Order must be agreed to in writing signed by both parties.

N. The Department and the Permittee agree that, except as otherwise set forth herein, this Order is not and shall not be interpreted to be a permit or modification of an existing permit under Federal, State or local law, and shall not be construed to waive or relieve the Permittee of its obligations to comply in the future with any permit.

Executed in duplicate, with each part being an original.

GLOBE METALLURGICAL, INC.	ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT
_____	_____
(Signature of Authorized Representative)	Lance R. LeFleur Director
_____	_____
(Printed Name)	(Date)
_____	
(Printed Title)	
_____	
(Date)	

Attachment A

Globe Metallurgical Inc.
Selma, Dallas County, Alabama
Facility No. 104-0001

Violation*	Number of Violations*	Seriousness of Violation & Base Penalty*	Standard of Care*	History of Previous Violations*
Failed Method 9 Visible Emission Observations	7	$ 21,000.00	$ 6,000.00	$ 10,000.00
Failure to report a violation of the Permit within 24 hours as required by General Proviso15(b)	1	$ 1,000.00	$ 1,000.00	
Failure to report a Deviation of the Permit within 2 working days as required by General Proviso 21(b)	2	$ 500.00	$ 500.00	
TOTAL	***10***	***$ 22,500.00***	***$ 7,500.00***	***$ 10,000.00***

Economic Benefit	$	-
Mitigating Factors	$	-
Ability to Pay	$	-
Other Factors	$	(5,000.00)
CIVIL PENALTY	**$**	**35,000.00**