

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

Chick Master Incubator Company)	<u>Director's Final Findings</u>
945 Lafayette Road)	<u>and Orders</u>
Medina, Ohio 44256)	

PREAMBLE

It is agreed by the parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to Chick Master Incubator Company ("Respondent") pursuant to the authority vested in the Director of the Ohio Environmental Protection Agency ("Ohio EPA") under Ohio Revised Code ("O.R.C.") §§ 3745.01 and 3751.09.

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 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 O.R.C. Chapter 3751 and the rules promulgated thereunder.

IV. FINDINGS

The Director of Ohio EPA has determined the following findings:

1. Respondent owns and operates equipment used for the manufacturing of chicken

incubators at its facility in Medina, Ohio.

2. Pursuant to Ohio Administrative Code ("OAC") rules 3745-100-06 and 3745-100-07, the owner or operator of a facility that is classified within a covered Standard Industrial Classification ("SIC") code, has 10 or more full-time employees, and manufactures, processes, and/or uses a toxic chemical listed in OAC rule 3745-100-10 in excess of the applicable threshold, must file a TRI report with the Ohio EPA and U.S. EPA on or before July 1 of the following year.
3. Respondent's facility is classified within a covered Standard Industrial Classification ("SIC") code, specifically SIC code number 3523.
4. Respondent employed approximately 112 employees in 1999, and 124 employees in 2000 at the Medina facility.
5. Copper (CAS 7440-50-8) is a listed chemical in OAC rule 3745-100-10.
6. Respondent processed approximately 91,350 pounds of copper in calendar year 1999, and 28,389 pounds of copper in calendar year 2000.
7. On May 6, 2003, Ohio EPA inspected Respondent's facility and found that Respondent had violated the reporting requirements contained in OAC rule 3745-100-07 and O.R.C. § 3751.07.
8. Respondent failed to submit TRI reports for calendar years 1999 and 2000 to Ohio EPA on or before July 1, 2000 and July 1, 2001, respectively, in violation of OAC rule 3745-100-07 and O.R.C. § 3751.07. The Ohio EPA eventually received the TRI reports for calendar years 1999 and 2000, as well as the associated filing fees, on June 24, 2003.
9. Respondent failed to submit TRI reports for calendar years 1999 and 2000 to U.S. EPA on or before July 1, 2000, and July 1, 2001, respectively.
10. 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 their relation to benefits to the people of the State to be derived from such compliance.

V. ORDERS

The Director hereby issues the following Order:

Within fourteen (14) days after the effective date of these Orders, Respondent shall pay the amount of two thousand six hundred thirty five dollars (\$2,635) in settlement of Ohio EPA's claims for civil penalties, which may be assessed pursuant to O.R.C. § 3751.10. Payment shall be made by an official check made payable to "Treasurer, State of Ohio". The official check shall be submitted to Ohio EPA, Office of Fiscal Administration, P.O. Box 1049, Columbus, Ohio 43216-1049, together with a letter identifying the Respondent.

A copy of the check shall be sent to James A. Orlemann, Manager, Engineering Section, or his successor, at the following address:

Division of Air Pollution Control
Ohio Environmental Protection Agency
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 the operation of Respondent's 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 Respondent.

IX. MODIFICATIONS

These Orders may be modified by agreement of the parties. 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 Respondent pursuant to these Orders shall be addressed to:

Ohio Environmental Protection Agency
Lazarus Government Center
Division of Air Pollution Control
122 South Front Street, P.O. Box 1049
Columbus, Ohio [43215 / 43216-1049]
Attn: James A. Orlemann, Manager, Engineering Section

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

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 service of these Orders, and Respondent hereby waives any and all rights Respondent may have to seek administrative or judicial review of these Orders 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 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

Christopher Jones
Director

Date

IT IS SO AGREED:

Chick Master Incubator Company

Signature

Date

Printed or Typed Name

Title

CIVIL PENALTY CALCULATION

$$CP = ((10*NE) + (25*NC) + (QC)) ((TF) (R) (NY))$$

Where:

NE = Number of employees = 112 (99), 124 (2000)

NC = Number of chemicals = 1

QC = Quantity of chemicals = 50

(50 is assigned to releases between 0 and 1,000 lbs/yr)

TF = Toxicity of chemical = 1.5

(1.5 is assigned to metals (non-carcinogens))

R = Recalcitrance = 1

NY = Number of years not reported = 1 (each year is calculated separately)

1999

$$CP = ((10 * 112) + (25 * 1) + (50)) ((1.5)(1)(1)) \\ = \$1,792.50$$

2000

$$CP = ((10 * 124) + (25 * 1) + (50)) ((1.5)(1)(1)) \\ = \$1,972.50$$

$$**TOTAL** = \$1,792.50 + \$1,972.50 = \$3,765$$