

BEFORE THE OHIO

ENVIRONMENTAL PROTECTION AGENCY

In the Matter of: : Directors Final Findings
: and Orders
Nash Finch Company :
6300 Creek Road :
Cincinnati, OH 45242 :

PREAMBLE

It is agreed by the parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to Nash Finch Company ("Respondent"), pursuant to the authority vested in the Director of the Ohio Environmental Protection Agency ("Ohio EPA") under Ohio Revised Code ("ORC") §§ 3753.08 and 3745.01.

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, or of the facility owned by 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 ORC Chapter 3753 and the rules promulgated thereunder.

IV. FINDINGS

The Director of the Ohio EPA has determined the following findings:

1. Respondent operates a refrigerated warehouse located at 6300 Creek Road in Cincinnati, Ohio. The facility uses the Risk Management Plan (RMP) regulated substance anhydrous ammonia in the refrigeration process. The regulated chemical anhydrous ammonia is listed in OAC rule 3745-104-04 and has a threshold limit of 10,000 pounds. Ohio EPA, Division of Air Pollution Control (DAPC) conducted an unannounced inspection on September 25, 2002 to question the amount of anhydrous ammonia that the facility had on site. The facility official stated that the facility has

14,000 pounds in the process. This amount of anhydrous ammonia requires the facility to be subject to the RMP program. Ohio EPA auditors questioned the facility officials as to why an RMP was not submitted. They stated that an RMP had been submitted. Upon further investigation, it was determined that an RMP was submitted to U.S. EPA in July 2002; however, the RMP was required to be submitted to U.S. EPA by June 1999. Furthermore, a copy was not submitted to Ohio EPA as required OAC rule 3745-104-38 until after a warning letter was sent by certified mail to the facility on September 30, 2002. The RMP was faxed to Ohio EPA, DAPC, on October 15, 2002.

2. Pursuant to Ohio Administrative Code ("OAC") rules 3745-104-02 and 3745-104-04, the owner or operator of a facility that has more than a threshold quantity of a regulated substance in a single process is required to submit an RMP to Ohio EPA and U.S. EPA on or before June 21, 1999.
3. Respondent has in excess of 10,000 pounds of anhydrous ammonia in a single process. This is above the threshold quantity of a regulated substance in a single process pursuant to OAC rule 3745-104-04.
4. On September 25, 2002, Ohio EPA, DAPC inspectors conducted an audit of the facility and determined that Respondent had not submitted an RMP to U.S. EPA until July 2002 and had not submitted a copy to Ohio EPA, as required by OAC rule 3745-104-38. Therefore, for the three years prior to the submission of the RMP, Respondent was out of compliance with the following rules:
 - a. Respondent failed to determine a threshold determination, as required by OAC rule 3745-104-02.
 - b. Respondent failed to comply with OAC rule 3745-104-05 which states that an owner or operator of a stationary source that has more than a threshold quantity of a regulated substance in a process, as determined by OAC rule 3745-104-02, shall comply with the requirements of OAC rule 3745-104-05.
 - c. Respondent failed to develop a management system to oversee the implementation of the risk management program elements, as required by OAC rule 3745-104-07.
 - d. Respondent failed to prepare a worst-case release scenario analysis and a five-year accident history, as required by OAC rule 3745-104-08.
 - e. Respondent failed to calculate an offsite consequence analysis, as required by OAC rule 3745-104-09.

- f. Respondent failed to analyze and report a worst-case release, as required by OAC rule 3745-104-10.
- g. Respondent failed to identify and analyze at least one alternative scenario, as required by OAC rule 3745-104-11.
- h. Respondent failed to estimate the offsite impact population, as required by OAC rule 3745-104-12.
- i. Respondent failed to estimate the offsite impact environmental receptors, as required by OAC rule 3745-104-13.
- j. Respondent failed to maintain the offsite consequence documentation, as required by OAC rule 3745-104-15.
- k. Respondent failed to compile and maintain up-to-date process safety information, as required by OAC rule 3745-104-24.
- l. Respondent failed to perform an initial process hazard analysis for processes covered by Chapter 3745-104 of the Administrative Code, as required by OAC rule 3745-104-25.
- m. Respondent failed to develop and implement written operating procedures that provide clear instructions for the covered processes, as required by OAC rule 3745-104-26.
- n. Respondent failed to train each employee involved in operating a process, as required by OAC rule 3745-104-27.
- o. Respondent failed to develop and implement a mechanical integrity program, as required by OAC rule 3745-104-28.
- p. Respondent failed to establish and implement written procedures to manage change, as required by OAC rule 3745-104-29.
- q. Respondent failed to certify that it has evaluated compliance with the provisions of rules 3745-104-24 to 3745-104-35 of the Administrative Code at least every three years to verify that the procedures and practices are adequate and are being followed, as required by OAC rule 3745-104-31.

- r. Respondent failed to develop a written plan of action regarding the implementation of the employee participation, as required by OAC rule 3745-104-33.
 - s. Respondent failed to implement a contractor safety program, as required by OAC rule 3745-104-35.
 - t. Respondent failed to submit a single RMP by June 21, 1999 that includes the information required by rules 3745-104-41 to 3745-104-48 of the Administrative Code for all covered process, as required by OAC rule 3745-104-38.
 - u. Respondent failed to complete a single registration form, as required by OAC rule 3745-104-42.
 - v. Respondent failed to submit one worst case release scenario to represent all regulated toxic substances and one alternative release scenario for each regulated toxic substances, as required by OAC rule 3745-104-43.
 - w. Respondent failed to submit a program level 3 prevention program, as required by OAC rule 3745-104-46.
 - x. Respondent failed to maintain records supporting the implementation of Chapter 3745-104 of the Administrative Code for five years from the date the record was generated, unless otherwise provided in OAC rules 3745-104-24 to 3745-104-35, as required by OAC rule 3745-104-50.
 - y. Respondent failed to pay annual RMP fees to Ohio EPA, as required by OAC rule 3745-104-53.
5. On July 8, 2003, an RMP program audit was conducted to determine compliance with the RMP prevention program prior to July 2002, when the initial RMP was submitted. A program level 3 prevention program was in place for the following elements: process safety information, process hazard analysis, operating procedures, mechanical integrity, compliance audits, and contractor safety program. However, the process hazard analysis had not been revalidated every five years and operating procedures were not annually certified that they were current and accurate. Furthermore, although many RMP elements were dated for 1994, they had not been implemented or updated until 2002.
6. The Director has given consideration to, and based on his determination on, evidence relating to the technical feasibility and economic reasonableness of complying with the

following Orders and benefits to the people of the State to be derived from such compliance.

V. ORDERS

The Director hereby issues the following Orders:

Pursuant to ORC § 3753.09, Respondent is assessed a civil penalty in the amount of seventeen thousand five hundred eleven dollars (\$17,511) in settlement of Ohio EPA's claim for civil penalties. Within fourteen (14) days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of fourteen thousand nine dollars (\$14,009) in settlement of Ohio EPA's claims for civil penalties, which will be deposited into the Risk Management Plan fund established pursuant to ORC § 3753.05.

Payment shall be made by an official check made payable to "Treasurer, State of Ohio" for fourteen thousand nine dollars (\$14,009). The official check shall be submitted to Ohio EPA, Office of Fiscal Administration, attention Brenda Case, P.O. Box 1049, Columbus, Ohio 43216-1049, together with a letter identifying the Respondent and the facility.

The remaining three thousand five hundred two dollars (\$3,502), an amount equal to 20% of the total penalty, shall be paid to fund a supplemental environmentally beneficial project. Specifically within thirty (30) days after the effective date of these Orders, Respondent shall deliver an official check in this amount and made payable to the Ohio Department of Natural Resources, Division of Forestry, State Forest Fund for the purpose of funding urban tree-planting projects in Ohio. This check shall specify that such monies are to be deposited into Fund No. 509. This check shall be sent to John Dorka, Deputy Chief or his successor, at the following address:

Division of Forestry
Ohio Department of Natural Resources
1855 Fountain Square Court, H-1
Columbus, Ohio 43224-1327

A copy of both checks shall be sent to:

Jim Orlemann
Manager, Engineering Section
Ohio Environmental Protection Agency
Division of Air Pollution Control
Lazarus Government Center
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 Respondent.

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

The 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 the Ohio EPA.

X. NOTICE

Unless otherwise specified in these Orders, all documents required to be submitted by Respondent pursuant to these Orders shall be addressed to:

Ohio Environmental Protection Agency
Division of Air Pollution Control
P.O. Box 1049
Columbus, Ohio 43216-1049
Attention: Sherri Swihart

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 resolved 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 services 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 AGREED:

Nash Finch Company

Signature

Date

Printed or Typed Name

Title