

**BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY**

In the Matter of:

Sun Chemical Corporation : **Director's Final Findings**
4526 Chickering Avenue : **and Orders**
Cincinnati, Ohio 45232 :

PREAMBLE

It is agreed by the parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to the Sun Chemical Corporation ("Respondent") pursuant to the authority vested in the Director of the Ohio Environmental Protection Agency ("Ohio EPA") under Ohio Revised Code ("ORC") §§ 3704.03 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 Respondent or of the Facility (as hereinafter defined) 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 3704 and the rules promulgated thereunder.

IV. FINDINGS

The Director of Ohio EPA has determined the following findings:

1. The Hamilton County Department of Environmental Services ("HCDES") acts as an agent of Ohio EPA for the Division of Air Pollution Control in Hamilton County.
2. Respondent owns and operates a chemical manufacturing plant at 4526 Chickering Avenue in Cincinnati, Ohio ("Facility").
3. On September 5, 2003, Respondent notified HCDES, by phone, that a malfunctioning raw material feed meter had caused a release of nitrogen oxides into the atmosphere at the Facility during the evening of September 4, 2003.

4. In correspondence dated September 12, 2003, Respondent provided a written report of the September 4, 2003 nitrogen oxides release. The report indicated the release occurred due to a malfunctioning raw material feed meter in Mix Tank H (emissions unit P098) beginning at approximately 11:10 p.m. and lasting twenty-six minutes. Respondent estimated the nitrogen oxides emissions were between one hundred and twelve pounds and three hundred and fifty pounds with a probable emissions of two hundred and thirty pounds.

5. Nitrogen oxides emissions are an "air contaminant" as defined in Ohio Administrative Code ("OAC") Rule 3745-31-01(H) and emissions unit P098 is an "air contaminant source" as defined in OAC Rule 3745-31-01(I).

6. OAC Rule 3745-15-07(A) and ORC § 3704.05(G) prohibit the emission of air pollutants that "endanger the health, safety or welfare of the public."

7. Computer dispersion modeling done by HCDES indicated the release resulted in a nitrogen oxides ground level concentration of 200 milligrams per cubic meter ("mg/m³") at fifty meters from the emissions source which is greater than the short term exposure limit ("STEL") of 9.41 mg/m³ recommended by the American Conference of Governmental Industrial Hygienists. This nitrogen oxides concentration potentially endangered the health, safety or welfare of the public, in violation of OAC Rule 3745-15-07(A) and ORC § 3704.05(G).

8. In a Notice of Violation dated October 29, 2003, HCDES cited Respondent for violation of OAC Rule 3745-15-07 for the September 4, 2003 nitrogen oxides release. HCDES requested Respondent submit a compliance plan and schedule identifying actions Respondent would take to prevent the nitrogen oxides emissions from occurring again.

9. In correspondence dated November 7, 2003, Respondent submitted a compliance plan to prevent further nitrogen oxides emissions from emissions unit P908. All components of the compliance plan were to be implemented by December 3, 2003. The compliance plan was implemented on schedule.

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

V. ORDERS

The Director hereby issues the following Order:

Within twenty-one (21) days after the effective date of these Orders, Respondent shall pay Ohio EPA the amount of eighteen thousand dollars (\$18,000) in settlement of

Ohio EPA's claims for civil penalties, which may be assessed pursuant to ORC Chapter 3704. Payment shall be made by an official check made payable to "Treasurer, State of Ohio" for eighteen thousand dollars (\$18,000). The official check shall be submitted to Brenda Case, Fiscal Specialist, together with a letter identifying the Respondent and the Facility, to the following:

Ohio EPA
Office of Fiscal Administration
P.O. Box 1049
Columbus, Ohio 43216-1049

A copy of the check shall be sent to James A. Orlemann, Enforcement Coordinator, Compliance and Enforcement, or his successor, at the following address:

Division of Air Pollution Control
Ohio Environmental Protection Agency
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, the Respondent's activities at the 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:

Hamilton County
Division of Environmental Services
250 William Howard Taft Rd.
Cincinnati, Ohio 45219-2660
Attn: Michael Kramer

and to:

Ohio Environmental Protection Agency
Lazarus Government Center
Division of Air Pollution Control
P.O. Box 1049
Columbus, Ohio 43216-1049
Attn: Thomas Kalman

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

Joseph P. Koncelik
Director

Date

IT IS SO AGREED:

Sun Chemical Corporation

Signature

Date

Printed or Typed Name

Title