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OHIO E.P.A.

DEC 28 2007

BEFORE THE OHIO

ENTERED DIRECTOR'S JOURNAL

ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

Warren Lapp and Son
44772 US Route 36
Coshocton, Ohio 43812

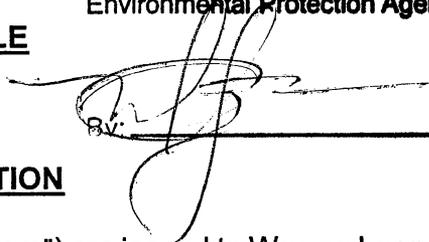
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Directors Final Findings

and Orders
I certify this to be a true and accurate copy of the official documents as filed in the records of the Ohio Environmental Protection Agency.

PREAMBLE

It is agreed by the parties hereto as follows:

By:  Date: 12/28/07

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to Warren Lapp and Son ("Respondent") pursuant to the authority vested in the Director of the Ohio Environmental Protection Agency ("Ohio EPA") under Ohio Revised Code ("ORC") §§ 3753.01 and 3753.08.

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 identified below 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 Ohio EPA has determined the following findings:

1. Respondent owns and operates a retail fertilizer sales operation that unloads anhydrous ammonia from tank trucks for storage in pressurized tanks. The ammonia is then unloaded into smaller "nurse" tanks for eventual sale and use by farmers. Respondent stores up to approximately 215,000 pounds of ammonia which is more than a threshold quantity of a "regulated substance," namely anhydrous ammonia, as defined in Ohio Administrative Code ("OAC") Rule 3745-104-01. The Risk Management Plan ("RMP") threshold amount for anhydrous ammonia is 10,000 pounds.

2. Pursuant to OAC Rule 3745-104-02, 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 Chapter 3745-104, shall comply with the requirements of this rule by submitting a RMP no later than June 21, 1999, to the U.S. EPA. Ohio did not have delegation of the RMP until January 3, 2000. Respondent submitted a plan on February 25, 2000, to the Ohio and U.S. EPA.
3. On May 31, 2007, Ohio EPA, Division of Air Pollution Control ("DAPC") inspectors conducted a RMP audit at Respondent's facility and discovered nine deficiencies pertaining to the rules. The deficiencies were as follows:
 - (a) Respondent failed to develop a management system, in violation of OAC Rule 3745-104-07.
 - (b) Respondent failed to maintain hazard assessment documentation, in violation of OAC Rule 3745-104-15.
 - (c) Respondent failed to compile and maintain the up-to-date safety information related to the regulated substances, processes and equipment, in violation of OAC Rule 3745-104-17.
 - (d) Respondent failed to conduct a review of the hazards associated with the regulated substances, process and equipment, in violation of OAC Rule 3745-104-18.
 - (e) Respondent failed to prepare written operating procedures, in violation of OAC Rule 3745-104-19.
 - (f) Respondent failed to ensure that each employee attends initial training and refresher training, in violation of OAC Rule 3745-104-20.
 - (g) Respondent failed to establish and implement a written mechanical integrity program, in violation of OAC Rule 3745-104-21
 - (h) Respondent failed to conduct a compliance audit, in violation of OAC Rule 3745-104-22.
 - (i) Respondent failed to develop an emergency response plan, in violation of OAC Rule 3745-104-36.
4. On July 2, 2007, the Ohio EPA auditor sent a deficiency letter to the Respondent's facility and required Respondent to submit the documentation within thirty days of receipt of the letter.
5. On August 16, 2007, the Ohio EPA received partial documentation from Respondent, correcting deficiencies (a), (f), (h) and (i) in Finding 3.

6. On September 4, 2007, a warning letter was sent to Respondent detailing the five remaining deficiencies in Finding 3, and requesting the documentation within ten days of receipt of the letter. The documentation has not been submitted.
7. ORC § 3753.06 prohibits violations of provisions of ORC Chapter 3753 or any rule adopted or issued under it. Respondent violated rules adopted under ORC Chapter 3753, specifically, the rules cited in Finding 3.
8. 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:

1. Respondent has agreed to submit adequate documentation to correct all the deficiencies referenced in **Findings 3 (b), (c), (d), (e) and (g)** on or before January 19, 2008.
2. Pursuant to ORC § 3753.09, Respondent is assessed a civil penalty in the amount of four thousand one hundred fifty-one dollars (\$4,151) 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 three thousand three hundred twenty-one dollars (\$3,321) 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 \$3,321. 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.
3. In lieu of paying the remaining eight hundred thirty dollars (\$830) of the civil penalty, Respondent shall fund a Supplemental Environmental Project ("SEP") by making a contribution in the amount of \$830 to the Ohio EPA's fund for the Clean Diesel School Bus Program (Fund 5CD0). Respondent shall make payment within thirty (30) days after the effective date of these Orders by tendering an official check made payable to "Treasurer, State of Ohio" for \$830. The official check shall be submitted to Brenda Case, together with a letter identifying the Respondent, the facility, and Fund 5CD0, to the above-stated address.

A copy of each of the above checks shall be sent to James A. Orlemann, Assistant Chief, SIP Development and Enforcement, or his successor at the following address:

Ohio EPA
Division of Air Pollution Control
P. O. Box 1049
Columbus, Ohio 43216

Should Respondent fail to fund the SEP within the required time frame set forth in Order 3, Respondent shall immediately pay to Ohio EPA \$830 of the civil penalty in accordance with the procedures in Order 2.

VI. TERMINATION

Respondent's obligations under these Orders shall terminate when Respondent certifies in writing and demonstrates to the satisfaction of Ohio EPA that Respondent has performed all obligations under these Orders and the Chief of Ohio EPA's Division of Air Pollution Control acknowledges, in writing, the termination of these Orders. If Ohio EPA does not agree that all obligations have been performed, then Ohio EPA will notify Respondent of the obligations that have not been performed, in which case Respondent shall have an opportunity to address any such deficiencies and seek termination as described above.

This certification shall contain the following attestation: "I certify that the information contained in or accompanying this certification is true, accurate and complete."

This certification shall be submitted by Respondent to Ohio EPA and shall be signed by a responsible official of Respondent. For purposes of these Orders, a responsible official is a "facility official" who is in charge of a principal business function of Respondent.

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 the 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 hereto. 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:

Kimberly Joseph
Ohio Environmental Protection Agency
DAPC
P.O. Box 1049
Columbus, Ohio 43216-1049

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



Chris Korleski
Director

12/26/27
Date

IT IS SO AGREED:

Warren Lapp and Son



Signature

12/1/07
Date

David Lapp
Printed or Typed Name

Partner
Title