OHIO E.P.A.
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DIRECTOR'S JOURNAL

BEFORE THE OHIO

ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:	:	
	:	
Heinz Frozen Food Company	:	Directors Final Findings
1301 Oberlin Avenue S.W.	:	and Orders
Massillon, Ohio 44647	:	

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.

By: _____ Date: 6-2-08

PREAMBLE

It is agreed by the parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to Heinz Frozen Food Company ("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 food processing facility that prepares and packages frozen foods located at 1301 Oberlin Road in Massillon, Ohio. The facility stores 110,000 lbs of the regulated substance, anhydrous ammonia, where it is used in a closed loop refrigeration system for product cooling and freezing. Respondent has more than a threshold quantity of a "regulated substance," namely anhydrous ammonia, as defined in ORC 3745-104-01. The RMP threshold amount of anhydrous ammonia is 10,000 pounds.

2. Pursuant to Ohio Administrative Code ("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 Risk Management Plan ("RMP") no later than June 21, 1999. Respondent submitted a Plan in 1999 as required.

3. On November 26, 2002, Ohio EPA, Division of Air Pollution Control ("DAPC") inspectors conducted an audit at Respondent's facility and discovered four 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 estimate and provide documentation pertaining to the worst case and alternative release population that correlated to the submitted RMP, in violation of OAC Rule 3745-104-15.

   (c) Respondent failed to annually review that the operating procedures are current and accurate, in violation of OAC Rule 3745-104-26(C).

   (d) Respondent failed to establish a system to promptly address the team's findings and recommendations, in violation of OAC Rule 3745-104-25(E).

4. On December 5, 2002, the Ohio EPA auditor sent a deficiency letter to the Respondent's facility and required Respondent to correct the deficiencies in (a) through (d) of Finding 3 to be compliance with the RMP Program.

5. A letter was sent to the Respondent's facility granting an extension until February 10, 2003, per the Respondent's request.

6. On February 4, 2003, Respondent submitted the documentation to correct all the deficiencies.

7. On May 31, 2007, the Ohio EPA conducted a second audit at Respondent's facility and discovered five deficiencies pertaining to the rules. The deficiencies were as follows:

   (a) Respondent failed to include all of the process safety information, in violation of OAC Rules 3745-104-24(D)(1)(d) and (D)(1)(h).

   (b) Respondent failed to annually review that the operating procedures are current and accurate, in violation of OAC Rule 3745-104-26(C). (This is a repeat violation.)

   (c) Respondent failed to implement mechanical integrity as scheduled, in violation of OAC Rule 3745-104-28(A)(5) and (E).

   (d) Respondent failed to create a complete investigation report, in violation of OAC Rule 3745-104-32(E).

   (e) Respondent failed to include contractors in the program, in violation of OAC Rule 3745-104-35.

8. On June 19, 2007, the Ohio EPA sent Respondent a deficiency letter requiring the deficiencies to be corrected and documentation to be submitted within thirty days of receipt of the letter.

9. On July 13, 2007, Respondent submitted documentation in response to the EPA's letter dated June 19, 2007; however, documents offered by the respondent pertaining to finding 7 (c) and (d) were deemed unresolved by the Ohio EPA auditor.

10. On September 4, 2007, the Ohio EPA auditor called Respondent to discuss paperwork that was expected as part of a complete response, which was not included in the July 13, 2007, letter. The Respondent needed clarity of what additional documentation was necessary. After further explanation from the Ohio EPA auditor, Respondent agreed to submit the additional documentation promptly.

11. On September 6, 2007, Respondent called the Ohio EPA auditor as a precautionary measure to assure accuracy and completeness of the additional documentation request.

12. On September 13, 2007, the Ohio EPA sent a warning letter to the facility requesting the documentation to be submitted within five days of receipt of the letter.

13. On September 21, 2007, Respondent submitted additional documentation as requested in the September 13, 2007, Warning Letter.

14. On October 5, 2007, the Ohio EPA auditor e-mailed the Respondent requesting the additional information which was not indicated in the warning letter.

15. On October 9, 2007, Respondent called the Ohio EPA auditor to inquire about the October 5, 2007, e-mail request for additional information.

16. On October 12, 2007, the Ohio EPA received all of the remaining requested documentation.

17. ORC § 3753.06 prohibits violations of provisions of ORC Chapter 3753 or any rule adopted or issued under it. As of at least May 31, 2007 (the second compliance audit) to October 12, 2007, Respondent violated rules adopted under ORC Chapter 3753, specifically, rules cited in Finding 7.

18. 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. Pursuant to ORC § 3753.09, Respondent is assessed a civil penalty in the amount of

fourteen thousand eight hundred dollars ($14,800) 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 eleven thousand eight hundred and forty dollars ($11,840) 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 $11,840. 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.

2. In lieu of paying the remaining two thousand nine hundred sixty dollars ($2,960) of the civil penalty, Respondent shall fund a Supplemental Environmental Project ("SEP") by making a contribution in the amount of $2,960 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 $2,960. 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.

3. 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

4. Should Respondent fail to fund the SEP within the required time frame set forth in order 2, Respondent shall immediately pay to Ohio EPA $2,960 of the civil penalty in accordance with the procedures in Order 2.

VI. TERMINATION

Respondent's obligations under these Orders shall terminate upon Ohio EPA's receipt of the official checks, as 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 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 and 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

5/27/08
Date

IT IS SO AGREED:

Heinz Frozen Food Company

Signature

5/1/08
Date

Alan Briggs

Printed or Typed Name

Plant Manager
Title