

OHIO E.P.A.

JAN 14 2010

ENTERED DIRECTOR'S JOURNAL

BEFORE THE OHIO  
ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

Sugar Creek Packing Co.  
2101 1/2 Kenskill Avenue  
Washington Courthouse, Ohio 43160

Director's 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: John Cassider Date: 1-14-10

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to Sugar Creek Packing Co. ("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 makes the following findings:

1. Respondent owns and operates a bacon processing facility located at 2101 1/2 Kenskill Avenue in Washington Courthouse, Ohio. Anhydrous ammonia is used in the refrigeration process. The quantity of anhydrous ammonia at the facility is approximately 13,000 pounds.
2. Anhydrous ammonia is a regulated substance listed in Ohio Administrative Code ("OAC") Rule 3745-104-04. 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 Rules 3745-104-06 through 49, where applicable, by submitting a Risk Management Plan ("RMP") and implementing a prevention program no later than June 21, 1999. On January 3, 2000, Ohio EPA, DAPC received delegation for the RMP program from U.S. EPA.

3. Anhydrous ammonia has a threshold of 10,000 pounds. Respondent stores anhydrous ammonia in an amount that exceeds the threshold established in OAC Rule 3745-104-04, and, as a result, Respondent is subject to the RMP requirements detailed in OAC Rule 3745-104-06.
4. On January 3, 2008, an RMP audit was conducted at the facility by Ohio EPA, DAPC. During the audit it was determined that an RMP was not submitted to U.S. EPA and Ohio EPA in June 1999, in violation of OAC Rule 3745-104-38(B). The date of receipt of the RMP is September 11, 2007. Respondent indicated that the RMP was completed in 2004 but had not been submitted. However, a plan dated prior to September 2007 was not available on-site.
5. The RMP prevention program elements were reviewed during the audit. It was determined that many of these elements were not implemented until 2004. RMP prevention program elements were not implemented in June 1999, in violation of OAC Rules 3745-104-24 through -35.
6. ORC § 3753.06 prohibits violations of provisions ORC Chapter 3753 or any rule adopted or issued under it. Respondent violated rules adopted under ORC Chapter 3753, specifically, the rules cited in Findings 4 and 5.
7. 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 benefits to the people of the State to be derived from such compliance.

#### **V. ORDERS**

The Director hereby issues the following Orders:

1. Respondent shall continue to implement the compliant RMP program.
2. Pursuant to ORC § 3753.09, Respondent shall pay the amount of five thousand three hundred twelve dollars (\$5,312) in settlement of Ohio EPA's claim for civil penalties. Within fourteen (14) days after the effective date of these Orders, payment to Ohio EPA shall be made by an official check made payable to "Treasurer, State of Ohio" for four thousand two hundred fifty dollars (\$4,250) of the

total amount which will be deposited into the Risk Management Plan fund established pursuant to ORC § 3753.05. The official check shall be submitted to Brenda Case, or her successor, together with a letter identifying the Respondent, to:

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

3. In lieu of paying the remaining one thousand sixty two dollars (\$1,062) of the civil penalty, Respondent shall fund a Supplemental Environmental Project ("SEP") by making a contribution in the amount of \$1,062 to the Ohio EPA's Clean Diesel School Bus Fund (Fund 5CD0). Respondent shall tender an official check made payable to "Treasurer, State of Ohio" for \$1,062. The official check shall be submitted to Brenda Case, or her successor, together with a letter identifying Respondent, the facility, and fund 5CD0 to:

Ohio EPA  
Office of Fiscal Administration  
Lazarus Government Center  
50 West Town Street, Suite 700  
Columbus, Ohio 43216-1049

4. 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  
Lazarus Government Center  
50 West Town Street, Suite 700  
Columbus, Ohio 43216-1049

5. Should Respondent fail to fund the SEP within the required timeframe set forth in Order 3, Respondent shall immediately pay to Ohio EPA \$1,062 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.

The 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 the person authorized to sign in OAC Rule 3745-35-02(B)(1) for a corporation or a duly authorized representative of Respondent as that term is defined in the above-referenced rule.

#### **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 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:

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

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**

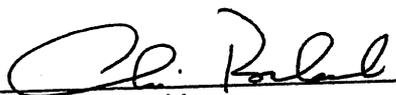
The effective date of these Orders is the date these Orders are entered into the Ohio EPA Director's journal.

#### **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:**

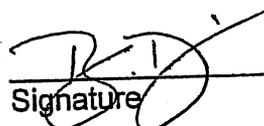
**Ohio Environmental Protection Agency**

  
\_\_\_\_\_  
Chris Korleski  
Director

1/12/10  
\_\_\_\_\_  
Date

**IT IS SO AGREED:**

**Sugar Creek Packing Co.**

  
\_\_\_\_\_  
Signature

12/30/09  
\_\_\_\_\_  
Date

Thomas J. Ballinger  
\_\_\_\_\_  
Printed or Typed Name

\_\_\_\_\_  
Date

Chief Financial Officer  
\_\_\_\_\_  
Title