

OHIO E.P.A.

JUL 26 2011

ENTERED DIRECTOR'S JOURNAL

**BEFORE THE OHIO ENVIRONMENTAL PROTECTION AGENCY**

In the Matter of:

Director's Final Findings and Orders

Cloverleaf Cold Storage CO.  
950 Cloverleaf Street S.E.  
Massillon, Ohio 44646

**PREAMBLE**

It is agreed by the parties hereto as follows:

**I. JURISDICTION**

These Director's Final Findings and Orders ("Orders") are issued to Cloverleaf Cold Storage CO., ("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 makes the following Findings:

1. Respondent owns and operates a refrigerated warehouse that is used for storage and distribution of frozen and cold food products. This facility is located at 950 Cloverleaf Street, in Massillon, Ohio. Respondent has more than a threshold quantity of a Risk Management Plan ("RMP") "regulated substance," namely anhydrous ammonia, as defined in Ohio Administrative Code ("OAC") Rule 3745-104-01. The RMP threshold amount for anhydrous ammonia is 10,000 pounds. Respondent stores 31,000 pounds of anhydrous ammonia in the cold storage system

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: [Signature] Date: 7-26-11

which includes compressors, receivers and piping. The process for which this regulated substance is employed is a "covered process" within the meaning of OAC Rule 3745-104-01(B)(11). The "covered process" at Respondent's facility is subject to Program 3 because the chemical, ammonia, is subject to OSHA Process Safety Management, and the worst-case scenario has population within the distance to the endpoint.

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, shall comply with the requirements of this Rule by submitting a RMP no later than June 21, 1999. Respondent submitted RMPs in June 2002 and July 2007.
3. On July 7, 2004, the Ohio EPA, Division of Air pollution control ("DAPC") inspector conducted the initial five-year inspection at Respondent's facility, and discovered seven rule violations. No penalty was assessed, but the Respondent was required to correct the violations and remain in compliance. All of the violations were corrected and the facility was in compliance at that time.
4. On February 18, 2010, the Ohio EPA conducted a second five-year inspection at Respondent's facility and discovered nine violations of the rules, which included six violations that were cited from the first inspection. The violations are as follows:
  - (a) The management system format maintained by Respondent to oversee implementation of the RMP Program, was deemed deficient by Ohio EPA, in violation of OAC 3745-104-07. This is a repeat violation from the 2004 inspection.
  - (b) Respondent failed to maintain certain records for the hazard assessment, including the population documentation, in violation of OAC 3745-104-15.
  - (c) Respondent failed to include facility siting documentation for the process hazard analysis (PHA) and failed to complete the recommendations from the 2002 and 2007 PHA, in violation of OAC Rule 3745-104-25(C)(5) and (E). This is a repeat violation from the 2004 inspection.
  - (d) Respondent failed to certify annually that the operating procedures are accurate and complete, except for 2008 and 2009, in violation of OAC 3745-104-26(C). This is a repeat violation from the 2004 inspection. Respondent secured a letter from the safety specialist stating that the operating procedures at this facility were annually reviewed, accurate, and complete.
  - (e) Respondent failed to provide training every three years to ensure the operator understands and adheres to current operating procedures

and to ascertain that each employee has understood the training, in violation of OAC 3745-104-27(B) and (C). This is a repeat violation from the 2004 inspection.

- (f) Respondent failed to timely inspect two ammonia sensors because they were located in an area where they could not be inspected, in violation of OAC Rule 3745-101-28. This is a repeat violation from the 2004 inspection.
  - (g) There have been no internal compliance audits conducted at this facility, in violation of OAC Rule 3745-104-31. They were required to be conducted in 2005 and 2008.
  - (h) Respondent failed to develop and implement an employee participation program, in violation of OAC 3745-104-33. This is a repeat violation from the 2004 inspection. Subsequent documentation provided by the Respondent indicated that it had developed an employee participation program. Respondent claims it had implemented that plan. Respondent denies this violation.
  - (i) Respondent failed to submit a correction to the emergency contact information within one month of the change, in violation of OAC 3745-104-49(D)(2).
5. A letter dated March 10, 2010, was sent to Respondent requiring the deficiencies to be corrected within thirty days of receipt of the letter.
  6. On March 22, 2010, Respondent sent a letter to the Ohio EPA and requested the documentation pertaining to the 2004 Ohio EPA inspection before they could resolve any violations.
  7. On April 6, 2010, Respondent sent documentation to remedy the violations. Findings 4(c),(f), and (g) were not resolved.
  8. On May 11, 2010, Respondent sent a 2010 PHA with the recommendations scheduled and the Findings from the April 2010 compliance audit, which resolved Finding 4(g). Finding 4(c) and (f) are still not resolved.
  9. 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 Findings 4(a),(b),(d),(e),(h) and (i) from February 18, 2010 (the date of the inspection) to April 6, 2010 (the date the documentation was submitted). The Rule cited in Finding (g) was in violation from February 18, 2010 until May 11, 2010. As of March 15, 2011, all of the Findings have been resolved.

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 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 fourteen thousand dollars (\$14,000) 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 two hundred dollars (\$11,200) 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 \$11,200. The official check shall be submitted to Ohio EPA, Office of Fiscal Administration, attention Brenda Case, 50 West Town Street, 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 twenty percent of the civil penalty, Respondent shall fund a Supplemental Environmental Project ("SEP") by making a contribution in the amount of two thousand eight hundred (\$2,800) to the Ohio EPA's fund for the Clean Diesel School Bus Program (Fund 5CDO). 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 \$2,800. The official check shall be submitted to Brenda Case, together with a letter identifying the Respondent, the facility, and Fund 5CDO, to the above-stated address.
3. A copy of each of the above checks shall be sent to Tom Kalman, Assistant Chief, SIP Development and Enforcement, or his successor at the following address:  

Ohio EPA  
Division of Air Pollution Control  
50 West Town St., Suite 700  
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 two thousand eight hundred dollars (\$2,800) of the civil penalty.

#### **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  
Division of Air Pollution Control  
50 West Town St., Suite 700  
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**

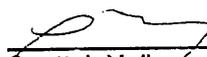
The effective date of these Orders is the date these Orders are entered into the Ohio EPA Director's journal.

**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.

**ORDERED AND AGREED:**

**Ohio Environmental Protection Agency**

  
\_\_\_\_\_  
Scott J. Nally  
Director

7/12/11  
Date

**AGREED:**

**Cloverleaf Cold Storage CO.**

  
\_\_\_\_\_  
Signature  
Daniel Kaplan  
Printed or Typed Name

7/5/11  
Date