

OHIO E.P.A.

BEFORE THE OHIO

JUN 24 2015

ENVIRONMENTAL PROTECTION AGENCY

ENTERED DIRECTOR'S JOURNAL  
In the Matter of:

Superior Dairy, Inc.	:	<u>Director's Final Findings</u>
4719 Navarre Road SW	:	<u>and Orders</u>
Canton, Ohio 44706	:	

**PREAMBLE**

It is agreed by the parties hereto as follows:

**I. JURISDICTION**

These Director's Final Findings and Orders ("Orders") are issued to Superior Dairy, Inc. ("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 (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 3753 and the rules promulgated thereunder.

**IV. FINDINGS**

The Director of the Ohio EPA makes the following findings:

1. Respondent owns a dairy products processing and distribution facility located on 4719 Navarre Road SW in Canton, Ohio. At the facility, Respondent operates a covered process, as defined in Ohio Administrative Code ("OAC") Rule 3745-104-01(B)(11). The covered process at the facility is classified as a process subject to the program three eligibility requirements, as defined in OAC Rule 3745-104-05, and shall comply with OAC Rules 3745-104-24 through 3745-104-35 to meet the prevention program requirements.
2. Anhydrous ammonia is used in the process as a coolant in a refrigeration system. Anhydrous ammonia is a regulated substance listed in OAC Rule 3745-104-04, and has a threshold quantity of 10,000 pounds. Respondent stores

40,500 pounds of anhydrous ammonia at the facility in various vessels and piping.

3. Pursuant to OAC Rule 3745-104-05, 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 or no later than when the threshold quantity is exceeded in a process.
4. Respondent submitted their initial RMP in 1999 and updated RMPs to Ohio EPA every five years, as required, stating that all of the documentation was complete and that the facility's RMP program was being implemented.
5. On July 25, 2006, an inspector with the Ohio EPA, Division of Air Pollution Control ("DAPC") conducted the initial five-year inspection at Respondent's facility and discovered five rule violations. No penalty was assessed for the violations, but Respondent was required to submit documentation to correct the violations and remain in compliance with the facility's RMP.
6. On September 13, 2006, Respondent submitted documentation in order to resolve the above-noted violations.
7. On August 21, 2013, Ohio EPA conducted the second five-year RMP inspection at Respondent's facility and discovered nine violations of the applicable rules, of which five are repeat violations. The violations are as follows:
  - (a) Respondent failed to include calculate the maximum intended inventory, relief system design and design basis and the ventilation system design as well as include the safety systems in the process safety information, in violation of OAC Rule 3745-104-24 (this is a repeat violation from the 2006 RMP inspection);
  - (b) Respondent failed to conduct a complete process hazard analysis (PHA) every five years and to resolve recommendations from previous PHAs, in violation of OAC Rule 3745-104-25 (this is a repeat violation from the 2006 RMP inspection);
  - (c) Respondent failed to review operating procedures on an annual basis and to update the procedures whenever there was a change in the process, in violation of OAC Rule 3745-104-26;
  - (d) Respondent failed to perform inspections and tests on process equipment that follow recognized and generally accepted good engineering practices and to correct deficiencies in equipment discovered during the inspections and test, in violation of OAC Rule 3745-104-28 (this is a repeat violation from the 2006 RMP inspection);
  - (e) Respondent failed to establish and implement written procedures to manage changes to process chemicals, technology, equipment, and

- procedures, in violation of OAC Rule 3745-104-29;
- (f) Respondent failed to conduct a RMP compliance audit every three years and to correct deficiencies discovered during the RMP audits, in violation of OAC Rule 3745-104-31 (this is a repeat violation from the 2006 RMP inspection);
  - (g) Respondent failed to investigate each incident which resulted in, or could reasonably have resulted in a catastrophic release of a regulated substance, in violation of OAC Rule 3745-104-32;
  - (h) Respondent failed to include operators when conducting the PHA, in violation of OAC Rule 3745-104-33; and
  - (i) Respondent failed to obtain and evaluate information regarding a contractor owner or operator's safety performance and program when selecting a contractor, in violation of OAC Rule 3745-104-35 (this is a repeat violation from the 2006 RMP inspection).
8. On September 4, 2013, the DAPC inspector sent Respondent a notice of violation letter requesting that the necessary documentation to correct the violations cited in Finding 7, be submitted to the Ohio EPA within 30 days of receipt of the letter. Respondent remained out of compliance with Findings 7(a) through 7(i).
9. ORC § 3753.06 prohibits violations of the provisions of ORC Chapter 3753 or any rule adopted under it. Respondent violated rules adopted under ORC Chapter 3753, specifically, the rules cited in Finding 7, in violation of ORC § 3753.06.
10. A follow up inspection was conducted on May 15, 2015 and Respondent is in compliance with Findings 7(a) through 7(i).
11. The Director has given consideration to, and based his determination on, evidence related 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 maintain compliance with the RMP regulations.
2. Pursuant to ORC § 3753.09, Respondent shall pay the amount of sixteen thousand dollars (\$16,000) in settlement of Ohio EPA's claim for civil penalties. Within 30 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 \$16,000, which will be deposited into the Risk Management Plan fund (Fund 5420) established pursuant to ORC § 3753.05. The official check shall be submitted to Carol Butler or her successor at the following address and shall

identify the Respondent and the facility:

Ohio EPA  
Office of Fiscal Administration  
50 West Town Street, Suite 700  
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, as required by Section V of these Orders, plus requirements of Order 1.

#### **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**

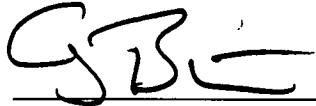
The effective date of these Orders is the date these Orders are entered into the Ohio EPA Director's journal.

#### **XIV. SIGNATORY AUTHORITY**

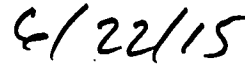
Each undersigned representative of a party to these Orders certifies that he or she is fully authorized to enter into these Orders and to legally bind such party to these Orders.

**ORDERED AND AGREED:**

**Ohio Environmental Protection Agency**



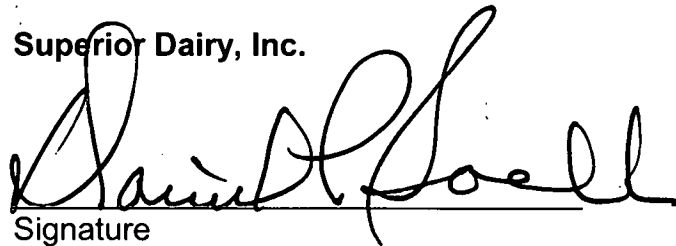
Craig W. Butler  
Director



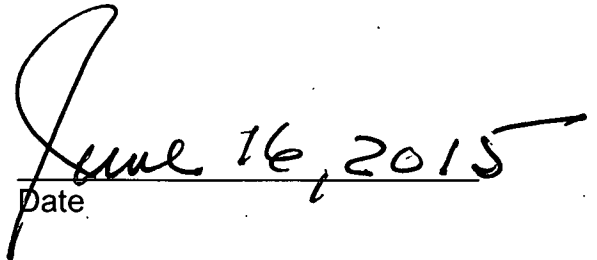
Date

**AGREED:**

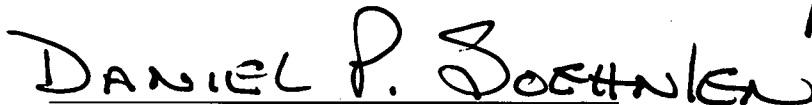
**Superior Dairy, Inc.**

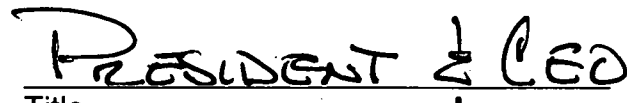


Signature



Date

  
Printed or Typed Name

  
Title