

BEFORE THE OHIO

ENVIRONMENTAL PROTECTION AGENCY

OHIO E.P.A.  
JUL 21 2005

ENTERED DIRECTOR'S JOURNAL

In The Matter Of:

Directors Final Findings  
and Orders

EMD Chemicals Inc.  
2909 Highland Ave.  
Cincinnati, Ohio 45212

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**PREAMBLE**

It is agreed by the parties hereto as follows:

**I. JURISDICTION**

These Director's Final Findings and Orders ("Orders") are issued to EMD Chemicals Inc. ("Respondent"), pursuant to the authority vested in the Director of the Ohio Environmental Protection Agency ("Ohio EPA") under Ohio Revised Code(ORC) 3753.02 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 facility 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 has determined the following findings:

1. Respondent operates a chemical facility at 2909 Highland Avenue in Cincinnati, Ohio that includes distillation of high purity solvents, storage of raw materials, dry powders, and corrosive liquids. Respondent is identified by Ohio EPA by facility ID 100000101329. Chloroform, ethyl ether, hydrochloric acid, and formaldehyde are Risk Management Plan (RMP) regulated substances listed in Ohio Administrative Code (OAC) rule 3745-104-04, and are stored at this facility in amounts above the RMP threshold limits.

The process includes 43,000 pounds of chloroform (threshold limit 20,000 pounds) that are stored in a tank vault. In addition, 41,000 pounds of ethyl ether (threshold

10,000 pounds) are stored in a tank truck, and 45,000 pounds of formaldehyde (threshold 15,000 pounds) are also stored in a tank truck. It was discovered in the 2003 Emergency and Hazardous Chemical Inventory Form submitted to the Ohio EPA and at the time of the audit, that periodically, approximately 15,000 to 45,100 pounds of 37% hydrochloric acid (threshold 15,000 pounds) are stored on site in 55-gallon drums. However, this was not reported in the initial RMP due to the fact that the facility officials did not feel that it was reportable because it was stored in drums.

2. 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 this rule by submitting an RMP no later than June 21, 1999. The Respondent submitted an RMP on June 21, 1999; however, hydrochloric acid was not reported.
3. On March 25, 2004, Ohio EPA, Division of Air Pollution Control (DAPC) inspectors conducted an audit at the facility and discovered deficiencies. The deficiencies were as follows:
  - (a) Respondent did not report hydrochloric acid in the RMP, as required by OAC rule 3745-104-02.
  - (b) Respondent failed to present the population source and documentation, using the most recent census data or updated information to estimate the population potentially affected, as required by OAC rules 3745-104-12 and-13.
  - (c) Respondent failed to present the complete information concerning the technology of the process, as required by OAC rule 3745-104-24.
  - (d) Respondent failed to address stationary source siting and hydrochloric acid in the process hazard analysis, as required by OAC rule 3745-104-25.
  - (e) Respondent failed to address all aspects of the processes when developing the standard operating procedures, as required by OAC rule 3745-104-26.
  - (f) Respondent failed to conduct refresher training for the operators every three years, as required by OAC rule 3745-104-27.
  - (g) Respondent failed to develop a mechanical integrity program, as required by OAC rule 3745-104-28.
  - (h) Respondent failed to conduct a compliance audit, as required by OAC rule 3745-104-31.

- (i) Respondent failed to develop an employee participation program, as required by OAC rule 3745-104-33.
  - (j) Respondent failed to document the information regarding their contractor program, as required by OAC 3745-104-35.
  - (k) Respondent failed to develop a procedure for their emergency response equipment and failed to inspect the equipment on a regular basis, as required by OAC rule 3745-104-37.
4. On April 6, 2004, a deficiency letter was sent to the facility official requesting the completed and corrected documentation pertaining to the deficiencies within thirty (30) days of receipt of the letter.
  5. On May 11, 2004, the facility official requested an extension and stated that the requested documentation was being developed and sent to the Ohio EPA.
  6. On May 17, 2004, an extension letter was sent to the facility requesting the documentation be submitted to the Ohio EPA within thirty (30) days of receipt of the letter.
  7. On June 17, 2004, the facility official faxed a response to the deficiency letter and only submitted background information for the dike measurements and the calculations for the hazard assessment for the hydrochloric acid.
  8. On June 21, 2004, a warning letter was sent stating that the thirty (30)-day extension had expired, and the requested documentation was now due within fourteen (14) days of receipt of the letter.
  9. From June 18, 2004 to May 13, 2005, various documents were submitted to Ohio EPA by Respondent.
  10. As of May 13, 2005 all of the deficiencies have been submitted and completed, and the facility is in compliance.
  11. 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 thirty two thousand dollars (\$32,000) 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 \$32,000 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 \$32,000. The official check shall be submitted to Ohio EPA, Office of Fiscal Administration, attention Brenda Case (or successor), P.O. Box 1049, Columbus, Ohio 43216-1049, together with a letter identifying Respondent and the facility.

A copy of this check shall be sent to:

Jim Orlemann  
Manager, Engineering Section  
Ohio Environmental Protection Agency  
Division of Air Pollution Control  
Lazarus Government Center  
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 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 Respondent.

#### **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 the 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 43216-0149  
Attention: Kimberly Joseph, DAPC, RMP

#### **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 this Orders.

#### **XII. WAIVER**

In order to resolve disputed claims, without admission of fact, violation or liability, and in lieu of further enforcement action taken 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 services 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 stay 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

*Joseph P. Koncelik*

Joseph P. Koncelik  
Director

7/19/05  
Date

**IT IS AGREED:**

EMD Chemicals Inc.

*Michael C. Mulligan*

Signature

7/05/2005  
Date

MICHAEL C. MULLIGAN

Printed or Typed Name

VICE PRESIDENT

Title