

**BEFORE THE OHIO
ENVIRONMENTAL PROTECTION AGENCY**

OHIO E.P.A.

DEC 20 2005

In the Matter of:

ENTERED DIRECTOR'S JOURNAL

Gordon Food Service
4980 Gateway Blvd.
Springfield, Ohio 45505

Director's Final Findings
and Orders

PREAMBLE

It is agreed by the parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to Gordon Food Service ("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 has determined the following findings:

1. Respondent is a refrigeration warehouse facility located at 4980 Gateway Blvd. in Springfield, Ohio. Anhydrous ammonia is used in the process as a refrigerant. Anhydrous ammonia is a regulated substance listed in Ohio Administrative Code ("OAC") Rule 3745-104-04 and has a threshold of 10,000 pounds. The quantity of anhydrous ammonia reported by Respondent in the Risk Management Plan ("RMP") submitted to Ohio EPA on June 22, 1999 is 31,780 pounds.
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 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. On July 27, 2004, an RMP audit of the Respondent was conducted by Ohio EPA, DAPC. Eight deficiencies were discovered during the inspection.
4. Ohio EPA, DAPC sent a deficiency letter on August 3, 2004 requiring thirty days for compliance.
5. An e-mail was received from Respondent on August 27, 2004 requesting a sixty-day extension. A letter granting an extension until November 10, 2004 was sent by Ohio EPA, DAPC on September 9, 2004.
6. An e-mail was received from Respondent on November 15, 2004 requesting an extension until November 30, 2004. Ohio EPA, DAPC replied via e-mail that the extension was granted.
7. Documentation was received by Ohio EPA, DAPC from the Respondent to resolve the deficiencies from the July 27, 2004 audit on December 3, 2004. Five of the eight deficiencies were addressed satisfactorily. A warning letter for the remaining three deficiencies was sent by Ohio EPA, DAPC on December 17, 2004 requesting additional documentation within seven days. A response was not received. A second warning letter was sent on January 25, 2005 providing seven days for compliance due to the fact that the green card was not received from the previous certified mailing.
8. Respondent requested an extension until February 22, 2005. This extension was granted by Ohio EPA, DAPC.
9. Respondent submitted information on February 23, 2005 to Ohio EPA. The documentation did not resolve the three remaining deficiencies. A conference call was held with Respondent on March 21. Ohio EPA, DAPC explained the requirements to resolve the remaining deficiencies. As of July 1, 2005, no further information has been received and the following deficiencies remain:
 - a. Respondent failed to have the supporting hazard assessment documentation, as required by OAC Rule 3745-104-15.
 - b. Respondent failed to have complete documentation for the process safety information, as required by OAC Rule 3745-104-24.
 - c. Respondent failed to have complete operating procedures, as required by

OAC Rule 3745-104-26.

10. These Orders are being submitted to the corporate office in Grand Rapids, Michigan due to the fact that this is the identity listed in the RMP as the owner or operator.
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. Respondent shall fully correct the RMP program deficiencies identified in Finding 9 by March 1, 2006 and shall submit a report to Ohio EPA by March 30, 2006 that documents how and when the deficiencies were corrected.
2. Respondent shall pay the amount of forty-nine thousand eight hundred dollars (\$49,800) in settlement of Ohio EPA's claim for civil penalties, which may be assessed pursuant to ORC Chapter 3753.09. 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 thirty-nine thousand eight hundred forty dollars (\$39,840) 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 nine thousand nine hundred sixty dollars (\$9,960) of the civil penalty, Respondent shall fund a Supplemental Environmental Project ("SEP") by making a contribution in the amount of nine thousand nine hundred sixty-eight dollars (\$9,968) to the Ohio EPA's fund for the Clean Diesel School Bus Fund (Fund 5CD). Respondent shall tender an official check made payable to "Treasurer, State of Ohio" for \$9,960. 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

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 43216-1049

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

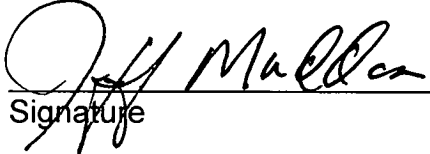


Joseph P. Koncelik
Director

12-15-05
Date

IT IS SO AGREED:

Gordon Food Service



Signature

12-6-05
Date

JEFF MADDOX

Printed or Typed Name

12-6-05
Date

its: Chief Financial Officer

Title