

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

OHIO E.P.A.
MAR -2 2004
ENTERED DIRECTOR'S JOURNAL

In the Matter of:

Unverferth Mfg. Co., Inc.) Director's Final Findings
18107 St. Rt. 224 West) and Orders
Kalida, Ohio 45853)

PREAMBLE

It is agreed by the parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to Unverferth Manufacturing Company, Inc. ("Respondent") pursuant to the authority vested in the Director of the Ohio Environmental Protection Agency ("Ohio EPA") under Ohio Revised Code ("ORC") § 3745.01 and 3751.09.

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 shall in any way alter Respondent's obligations under this Order.

III. DEFINITIONS

Unless otherwise stated, all terms used in these Orders shall have the same meaning as defined in ORC Chapter 3751 and the rules promulgated thereunder.

IV. FINDINGS

The Director of Ohio EPA has determined the following findings:

1. Respondent manufactures large wheels and farm implements at its facility in Kalida, Ohio.
2. Pursuant to Ohio Administrative Code ("OAC") rules 3745-100-06 and 3745-100-07, the owner or operator of a facility that is classified within a covered Standard Industrial Classification ("SIC") code, has 10 or more full-time employees, and manufactures, processes, and/or uses a toxic chemical listed in OAC rule 3745-100-10 in excess of the applicable threshold, must file a TRI report with the Ohio EPA and U.S. EPA on or before July 1 of the following year.
3. Respondent's facility is classified within a covered Standard Industrial Classification code, specifically SIC 3523, Farm Machinery and Equipment.
4. Respondent reported employment of 164 employees in 1999, 197 employees in 2000, and 220 employees in 2001, at the Kalida facility.
5. Manganese, Chemical Abstract Services ("CAS") number 7439-96-5, and nickel, CAS number 7440-02-0, are listed toxic chemicals in OAC rule 3745-100-10.
6. Respondent reported processing 29,602 pounds of manganese and 35,049 pounds of nickel in calendar year 1999, 33,490 pounds of manganese and 38,349 pounds of nickel in calendar year 2000, and 47,914 pounds of manganese and 58,357 pounds of nickel in calendar year 2001.
7. On June 18, 2003, Ohio EPA inspected the Respondent's facility and reviewed TRI record keeping and reporting requirements. Though TRI related records for paint and other toxic chemicals were provided, Respondent had not maintained chemical use information related to metal use at the facility.
8. Respondent developed and provided additional, metals-related annual use information subsequent to the inspection. Information provided by Respondent demonstrated that the facility had violated the toxic chemical reporting requirements contained in OAC rule 3745-100-07 and ORC § 3751.07.
9. Respondent failed to submit TRI reports for calendar years 1999, 2000 and 2001 to Ohio EPA on or before July 1, 2000, July 1, 2001 and July 1, 2002, respectively, in violation of OAC rule 3745-100-07 and O.R.C. § 3751.07.

Respondent also failed to pay the filing fees as required by OAC rule 3745-100-12, in violation of that rule and ORC § 3751.07. (Respondent submitted delinquent reports, dated October 29, 2003 and fees, dated October 30, 2003. These were received November 4, 2003.)

10. Respondent failed to submit TRI reports for calendar years 1999, 2000 and 2001 to U.S. EPA on or before July 1, 2000, July 1, 2001, and July 1, 2002, respectively.
11. 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 their relation to benefits to the people of the State to be derived from such compliance.

V. ORDERS

The Director hereby issues the following Order:

Respondent shall pay the amount of fourteen thousand nine hundred seventy-one dollars (\$14,971) in settlement of Ohio EPA's claims for civil penalties, which may be assessed pursuant to ORC § 3751.10. Payment shall be made in two equal installments of seven thousand four hundred eighty-five and one-half dollars (\$7,485.50). Each payment shall be made by an official check made payable to "Treasurer, State of Ohio" and submitted to Ohio EPA, Office of Fiscal Administration, P.O. Box 1049, Columbus, Ohio 43216-1049, together with a letter identifying the Respondent and the facility. The first payment shall be made within thirty (30) days of effective date of these Orders and the second payment shall be made by no later than October 15, 2004.

A copy of each check shall be sent to James A. Orlemann, Manager, Engineering Section, or his successor, at the following address:

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

VI. TERMINATION

Respondent's obligations under this Order shall terminate upon Ohio EPA's receipt of the total payment required by Section V of this Order.

VII. OTHER CLAIMS

Nothing in this Order 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 this Order, 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 this Order shall be undertaken in accordance with the requirements of all applicable local, state and federal laws and regulations. This Order does not waive or compromise the applicability and enforcement of any other statutes or regulations applicable to Respondent.

IX. MODIFICATIONS

This Order 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

Copies of all documents required to be submitted by Respondent pursuant to these Orders shall be provided and addressed to:

Ohio Environmental Protection Agency
Lazarus Government Center
Division of Air Pollution Control
122 South Front Street, P.O. Box 1049
Columbus, Ohio 43216-1049
Attn: James A. Orlemann, Manager, Engineering Section,

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 this Order.

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 this Order, Respondent consents to the issuance of this Order and agrees to comply with this Order. Compliance with this Order 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 this Order, and Respondent hereby waives any and all rights Respondent may have to seek administrative or judicial review of this Order either in law or equity.

Notwithstanding the preceding, Ohio EPA and Respondent agree that if this Order is 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 this Order notwithstanding such appeal and intervention unless this Order is stayed, vacated or modified.

XIII. EFFECTIVE DATE

The effective date of this Order is the date this Order is entered into the Ohio EPA Director's journal.

XIV. SIGNATORY AUTHORITY

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

IT IS SO ORDERED AND AGREED:

Ohio Environmental Protection Agency

Christopher Jones
Christopher Jones
Director

2-26-04
Date

IT IS SO AGREED:

Unverferth Manufacturing Co., Inc.

Larry Unverferth
Signature

2-23-04
Date

Larry Unverferth
Printed or Typed Name

Director of Ohio Manufacturing Operations
Title