

**BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY**

OHIO E.P.A.
JUN 13 2002
ENTERED DIRECTOR'S JOURNAL

In the Matter of:

**ELM Packaging Co.
1261 Brukner Road
Troy, OH 45373**

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**Director's Final Findings
and Orders**

PREAMBLE

It is hereby agreed that:

I. JURISDICTION

These Director's Findings and Orders ("Orders") are issued to ELM Packaging Company ("Respondent"), pursuant to the authority vested in the Director of the Ohio Environmental Protection Agency ("Ohio EPA") under Ohio Revised Code ("ORC") sections 3753.08 and 3753.09.

II. PARTIES BOUND

These Orders shall apply to and be binding upon Respondent and its successors in interest liable under Ohio law. No change in ownership relating to the facility identified in Finding 1 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 used in ORC Chapter 3753 and the regulations promulgated thereunder.

IV. FINDINGS OF FACT

The Director of Ohio EPA has determined the following findings of fact:

1. Respondent owns and operates a plastic foam packaging production facility located at 1261 Brukner Drive in Troy (Miami county), Ohio.
2. Pursuant to Ohio Administrative Code ("OAC") Rules 3745-104-02 and 3745-104-04, the owner or operator of a facility that has more than a threshold quantity of a regulated substance in a single process is required to submit a Risk Management Plan ("RMP") to Ohio EPA and U.S. EPA on or before June 21, 1999.

3. ELM Packaging has in excess of 10,000 pounds of isopentane in a single process. This is above the threshold quantity of a regulated substance in a single process, pursuant to OAC Rule 3745-104-04.
4. On December 4, 2001, Ohio EPA's Division of Air Pollution Control ("DAPC") inspected ELM Packaging and discovered the following:
 - a. OAC Rule 3745-104-07 requires a facility to assign a qualified person or position that has the overall responsibility for the development, implementation, and integration of the risk management program elements. Respondent failed to develop a management system to oversee the implementation of a management program for the RMP elements, in violation of OAC Rule 3745-104-07.
 - b. OAC Rule 3745-104-15(E) requires a facility to maintain records on the offsite consequence analysis. Respondent failed to maintain records on the data used to estimate population and environmental receptors potentially affected, in violation of OAC Rule 3745-104-15(E).
 - c. OAC Rule 3745-104-17 requires a facility to maintain up-to-date safety information. Respondent failed to maintain records for safe upper and lower temperatures, pressures, flows, and compositions for the subject process, in violation of OAC Rule 3745-104-17(A)(3).
 - d. OAC Rule 3745-104-18(A) requires a facility to conduct a review of the hazards associated with the regulated substances, process, and procedures. Respondent failed to conduct a review that included the hazards associated with the process or any steps used or needed to detect or monitor releases, in violation of OAC Rules 3745-104-18(A)(1) and (A)(4).
 - e. OAC Rule 3745-104-18(C) requires a facility to document the results of the hazard review and ensure that problems identified are resolved in a timely manner. Respondent failed to document the results of the hazard review, in violation of OAC Rule 3745-104-18(C).
 - f. OAC Rules 3745-104-19(B)(4), (B)(7) and (B)(8) require a facility to include in operating procedures: emergency shutdown and emergency operations, consequences of deviations, and equipment inspections. Respondent failed to include in the operating procedures for the subject process: emergency shutdown and emergency operations, consequences of deviations, and equipment inspections, in violation of OAC Rules 3745-104-19(B)(4), (B)(7), and (B)(8).
 - g. OAC Rule 3745-104-20(D) requires a facility to ensure that operators are trained in any updated or new procedures prior to startup of a process after a major

- change. Respondent failed to train operators after the regulated substance was changed from difluoroethane to isopentane, in violation of OAC Rule 3745-104-20(D).
- h. OAC Rule 3745-104-21 requires a facility to implement procedures to maintain the on-going mechanical integrity of the process equipment and to perform inspections and tests on process equipment. Respondent failed to implement mechanical integrity procedures to perform inspections and tests on process equipment, in violation of OAC Rule 3745-104-21.
 - i. OAC Rule 3745-104-37 requires a facility to develop and implement an emergency response program. Respondent failed to provide to Ohio EPA inspectors an emergency response program, in violation of OAC Rule 3745-104-37.
 - j. OAC Rule 3745-104-41 requires a facility to include in their RMP a complete executive summary which would include the accidental release prevention and emergency response policies, summary of worst case and alternative release scenarios, general accidental release prevention program, five-year accident history, emergency response program, and any planned changes to improve safety. Respondent failed to include in the RMP a complete executive summary in violation of OAC Rule 3745-104-41.
 - k. OAC Rules 3745-104-43(B)(11), (B)(13), and (B)(14) require a facility to include in the RMP for the worst case and alternative release scenario, the distance to the endpoint and passive and active mitigation considered. Respondent failed to include the correct distance to the endpoint for the worst case release scenario, and passive and active mitigation considered for the alternative release scenario, in violation of OAC Rules 3745-104-43(B)(11), (B)(13), and (B)(14).
 - l. OAC Rule 3745-104-45 requires a facility to include in their RMP process controls in use and mitigation systems in use for the subject process. Respondent failed to include the correct process controls in use and mitigation systems in use for the subject process, in violation of OAC Rule 3745-104-45.
5. A warning letter was mailed to Respondent on December 7, 2001 requesting a corrected RMP within sixty (60) days and a copy of the Emergency Response Plan by December 21, 2001.
 6. ELM Packaging resubmitted their RMP and emergency response plan to Ohio EPA DAPC on February 25, 2002. The emergency response plan was dated February 2, 2002 and the corrected RMP is identical to the original RMP.

7. 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 the 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 maintain compliance with the requirements of OAC Chapter 3745-104 as applicable to Respondent's facility.
2. Respondent shall submit an acceptable, corrected RMP within fourteen (14) days after effective date of these orders to DAPC, Ohio EPA, and U.S. EPA, RMP Reporting Center.
3. Pursuant to ORC 3753.09, Respondent is assessed a civil penalty in the amount of twenty six thousand dollars (\$26,000) in settlement of Ohio EPA's claim for civil penalties. Respondent shall pay to Ohio EPA the amount of twenty thousand eight hundred dollars (\$20,800) of the total penalty pursuant to the following schedule:

six thousand nine hundred thirty three dollars (\$6933) due no later than June 30, 2002;

six thousand nine hundred thirty three dollars (\$6933) due no later than July 31, 2002;

six thousand nine hundred thirty four dollars (\$6934) due no later than August 31, 2002.

The civil penalty shall be credited to the risk management plan reporting fund created in section 3753.05 of the Revised Code. Payment shall be made by certified check made payable to "Treasurer, State of Ohio" and sent to Vicki Galilei, Fiscal Specialist, or her successor, at the following address:

Fiscal Administration
Ohio Environmental Protection Agency
P.O. Box 1049
Columbus, Ohio 43216-1049

A copy of the 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, OH 43216-1049

In lieu of payment to Ohio EPA of the remaining five thousand two hundred dollars (\$5200) of the total penalty amount, Respondent shall perform the supplemental environmentally beneficial project identified in Order 4.

4. Respondent shall perform the supplemental environmentally beneficial project consisting of funding urban tree-planting projects in Ohio. Specifically, within thirty (30) days after the effective date of these Orders, Respondent shall deliver a certified check in the amount of five thousand two hundred dollars (\$5200) made payable to the Ohio Department of Natural Resources, Division of Forestry, State Forest Fund for this purpose. This check shall specify that such monies are to be deposited into Fund No. 509. The check shall be sent to John Dorka, Deputy Chief, or his successor, at the following address:

Division of Forestry
Ohio Department of Natural Resources
1855 Fountain Square Court, H-1
Columbus, Ohio 43224-1327

A copy of the check shall be sent to James A. Orlemann, Manager, Engineering Section, or his successor, at the above-stated address.

VI. 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 the Respondent's facility.

VII. NOTICE

All documents required by these Orders, unless otherwise specified in writing, shall be submitted to:

Ohio Environmental Protection Agency
Division of Air Pollution Control

P.O. Box 1049
Columbus, OH 43216-0149
Attention: Paul Koval

VIII. RESERVATIONS OF RIGHTS

Nothing contained herein prevents Ohio EPA from seeking legal or equitable relief to enforce the terms of these Orders or from taking other administrative, legal, or equitable action as deemed appropriate and necessary, including seeking penalties against Respondent for noncompliance with these Orders. Nothing contained herein prevents Ohio EPA from exercising its lawful authority to require Respondent to perform additional activities at its facility pursuant to R.C. Chapter 3753 or any other applicable law in the future. Nothing herein restricts the right of the Respondent to raise any administrative, legal or equitable claim or defense with respect to such further actions that Ohio EPA may seek to require of Respondent.

IV. MODIFICATIONS

These Orders may be modified by mutual agreement of the parties. Modifications shall be in writing and shall be effective on the date entered in the Journal of the Director of Ohio EPA.

X. SIGNATORIES

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 this document.

XI. WAIVER

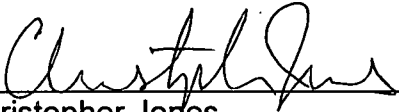
In order to resolve disputed claims, without admission of fact, violation or liability, Respondent agrees to comply with these Orders. Compliance with these Orders shall be a full accord and satisfaction for Respondent's liability for the specific violations cited herein. Respondent hereby waives the right to appeal the issuance, terms and service of these Orders and it hereby waives any and all rights it 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 an appeal. In such event, Respondent shall continue to comply with these Orders unless said Orders are

stayed, vacated, or modified.

IT IS SO ORDERED AND AGREED:

Ohio Environmental Protection Agency

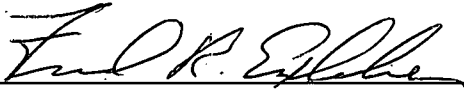


Christopher Jones
Director

6-7-02
Date

IT IS AGREED:

ELM Packaging Company



By

6/3/02
Date

VP Operations
Title