

**BEFORE THE OHIO
ENVIRONMENTAL PROTECTION AGENCY**

OHIO E.P.A.

MAY 30 2013

ENTERED DIRECTOR'S JOURNAL

In the Matter of:

DAP, Inc.
875 North Third Street
Tipp City, Ohio 45371

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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 DAP, 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 operates an aerosol paint and insulating foam manufacturing facility in Tipp City, Ohio. The facility's can filling operation inserts small quantities of a flammable mixture (propane, isobutane, and butane) and/or dimethyl ether for use as propellants in consumer paint and foam products.

2. The flammable mixture (propane, isobutane, and butane) and dimethyl ether are regulated substances as defined in Ohio Administrative Code ("OAC") Rule 3745-104-01, and as listed in OAC Rule 3745-104-04. 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 an accidental release prevention program no later than June 21, 1999 or no later than when the threshold limit is exceeded in a process. On January 3, 2000, Ohio EPA, Division of Air Pollution Control received delegation for the RMP program from U.S. EPA. Respondent submitted the initial RMP in June of 1999 and has resubmitted every five years thereafter.

3. The flammable mixture (propane, isobutane, and butane) and dimethyl ether both have an RMP threshold quantity of 10,000 pounds. Respondent stores these regulated substances in four storage tanks. The flammable mixture is stored in two 66,605-pound storage tanks and one 32,709-pound storage tank and the dimethyl ether is stored in an 18,040-pound storage tank.

4. An initial RMP audit was conducted by Ohio EPA on December 21, 2005. The following eight violations were discovered during the audit:

- (a) Respondent failed to include the detection system for the flammables in the process safety information, in violation of OAC Rule 3745-104-24;
- (b) Respondent failed to establish a system to address the process hazard analysis (PHA) team's findings and recommendations in a timely manner and to ensure a PHA is revalidated at least every five years, in violation of OAC Rules 3745-104-25(E) and (F), respectively;
- (c) Respondent failed to annually certify that operating procedures are current and accurate, in violation of OAC Rule 3745-104-26;
- (d) Respondent failed to conduct refresher training on the operating procedures, in violation of OAC Rule 3745-104-27;
- (e) Respondent failed to establish and implement a written mechanical integrity program for all RMP critical equipment, in violation of OAC Rule 3745-104-28;
- (f) Respondent failed to conduct an RMP compliance audit every three years, in violation of OAC Rule 3745-104-31;
- (g) Respondent failed to coordinate the emergency response plan with the county local emergency planning committee and the fire department, in violation of OAC Rule 3745-104-36; and
- (h) Respondent failed to maintain records supporting the implementation of the OAC Chapter 3745-104 requirements for five years from the date the record was generated.

5. Respondent submitted documentation in order to resolve the above-noted violations and a completion letter for these violations was sent on February 27, 2006 requiring Respondent to maintain compliance with the RMP regulations. No penalty was assessed for the violations discovered in 2005.

6. On September 27, 2012, Ohio EPA conducted the second five-year RMP audit at Respondent's facility and discovered six violations of the applicable rules. Five of these violations are repeat violations from the RMP audit conducted in December 2005. The violations were as follows:

- (a) Respondent failed to update and revalidate the process hazard analysis (PHA) at least every five years, in violation of OAC Rule 3745-104-25 – this is a repeat violation;
- (b) Respondent failed to annually certify that operating procedures were reviewed and accurate, in violation of OAC Rule 3745-104-26 - this is a repeat violation;
- (c) Respondent failed to provide three-year refresher training on operating procedures, in violation of OAC Rule 3745-104-27 - this is a repeat violation;
- (d) Respondent failed to include all RMP covered equipment in the mechanical integrity program, in violation of OAC Rule 3745-104-28 - this is a repeat violation;
- (e) Respondent failed to conduct an RMP compliance audit at least every three years, in violation of OAC Rule 3745-104-31 - this is a repeat violation; and
- (f) Respondent failed to include all contractors in their contractor safety program, in violation of OAC Rule 3745-104-35.

7. A notice of violation letter outlining the six violations was mailed to Respondent on October 10, 2012.

8. Respondent submitted documentation to resolve the violations on November 16, 2012. Documentation for the thickness testing on the four storage tanks and the annual testing of the interlocks was submitted to Ohio EPA in January of 2013.

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 6, in violation of ORC § 3753.06.

10. 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 will continue to implement a compliant RMP program.
2. Pursuant to ORC § 3753.09, Respondent shall pay the amount of nine thousand two hundred dollars (\$9,200) in settlement of Ohio EPA's claim for civil penalties. Within thirty (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 \$9,200, 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, together with a letter identifying the Respondent, to:

Ohio EPA
Fiscal Administration
Lazarus Government Center
50 West Town Street, Suite 700
Columbus, Ohio 43215

3. A copy of the above check shall be sent to Bruce Weinberg, Manager, Enforcement Section, or his successor, at the following address:

Ohio EPA
Division of Air Pollution Control
Lazarus Government Center
50 West Town Street, Suite 700
Columbus, Ohio 43215

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.

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



Scott J. Nally
Director

5/22/13

Date

AGREED:

DAP, Inc.


Signature

5/16/13

Date

Ken Barr

Printed or Typed Name

Plant Manager

Title