

BEFORE THE OHIO

ENTERED DIRECTOR'S JOURNAL

ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

Peak Foods LLC
1903 W. Main Street
Troy, Ohio 45373

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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 Peak Foods LLC ("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 owns a food processing facility located in Troy, Ohio where it manufactures non-dairy whipped toppings. At the facility, Respondent operates a covered process, as defined in Ohio Administrative Code ("OAC") Rule 3745-104-01(B)(11). The covered process at the facility is classified as a process subject to the program three eligibility requirements, as defined in OAC Rule 3745-104-05, and shall comply with OAC Rules 3745-104-24 through 3745-104-35 to meet the prevention program requirements.
2. Anhydrous ammonia is used in the process as a coolant in a refrigeration system. Anhydrous ammonia is a regulated substance listed in OAC Rule 3745-104-04, and has a threshold quantity of 10,000 pounds. Respondent stores

18,000 pounds of anhydrous ammonia at the facility in various vessels and piping.

3. Pursuant to OAC Rule 3745-104-05, 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 a prevention program no later than June 21, 1999 or no later than when the threshold quantity is exceeded in a process.
4. Respondent submitted their initial RMP in 1999 and updated RMPs to Ohio EPA every five years, as required, stating that all of the documentation was complete and that the facility's RMP program was being implemented.
5. On May 24, 2005, an inspector with the Ohio EPA, Division of Air Pollution Control ("DAPC") conducted the initial five-year inspection at Respondent's facility and discovered seven rule violations. No penalty was assessed for the violations, but Respondent was required to submit documentation to correct the violations and remain in compliance with the facility's RMP.
6. On October 21, 2005, Respondent submitted documentation in order to resolve the above-noted violations.
7. On August 13, 2013, Ohio EPA conducted the second five-year RMP inspection at Respondent's facility and discovered seven violations of the applicable rules, of which three are repeat violations. The violations are as follows:
 - (a) Respondent failed to include safety systems in the process safety information, in violation of OAC Rule 3745-104-24;
 - (b) Respondent failed to include safety systems and their functions in the operating procedures and to annually view the procedures to ensure that they are current and accurate, in violation of OAC Rule 3745-104-26 (this is a repeat violation from the 2005 RMP inspection);
 - (c) Respondent failed to provide refresher training every three years to employees involved with the process, in violation of OAC Rule 3745-104-27 (this is a repeat violation from the 2005 RMP inspection);
 - (d) Respondent failed to conduct tests and inspections consistent with applicable manufacturers' recommendations and good engineering practices, in violation of OAC Rule 3745-104-28 (this is a repeat violation from the 2005 RMP inspection);
 - (e) Respondent failed to conduct a pre-startup safety review when a modification to the process was significant enough to require a change in the process safety information, in violation of OAC Rule 3745-104-30;
 - (f) Respondent failed to obtain and evaluate information regarding a contractor owner or operator's safety performance and program when selecting a contractor, in violation of OAC Rule 3745-104-35; and

- (g) Respondent failed to train employees involved in the emergency response program, in violation of OAC Rule 3745-104-37.
- 8. On August 26, 2013, the DAPC inspector sent Respondent a notice of violation letter requesting that the necessary documentation to correct the violations cited in Finding 7, be submitted to the Ohio EPA within 30 days of receipt of the letter.
- 9. By January 24, 2014, Respondent submitted documentation to correct all of the violations cited in Finding 7.
- 10. 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 7, in violation of ORC § 3753.06.
- 11. 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. Pursuant to ORC § 3753.09, Respondent shall pay the amount of seven thousand seven hundred fifty dollars (\$7,750) in settlement of Ohio EPA's claim for civil penalties. Within 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 \$7,750, 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 at the following address and shall identify the Respondent and the facility:

Ohio EPA
Office of Fiscal Administration
50 West Town Street, Suite 700
P.O. Box 1049
Columbus, Ohio 43216-1049.

- 2. A copy of the above check shall be sent to James Kavalec, Enforcement Section 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



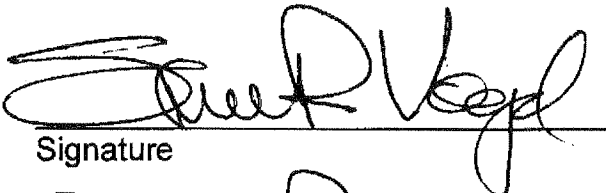
Craig W. Butler
Director

8/30/14

Date

AGREED:

Peak Foods LLC



Signature

8/15/2014

Date

Steve P. Vogel

Printed or Typed Name

VPOperations

Title