

BEFORE THE OHIO ENVIRONMENTAL PROTECTION AGENCY

OHIO E.P.A.

DEC 28 2007

ENTERED DIRECTOR'S JOURNAL

In the Matter of:

Millersport Fertilizer
10221 Lancaster-Newark Road
Millersport, Ohio 43046

:
:
:

Director's Final Findings and Orders

I certify this to be an accurate copy of the official documents as filed in the records of the Ohio Environmental Protection Agency.

PREAMBLE

It is agreed by the parties hereto as follows:

By: [Signature] Date: 12/28/07

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to Millersport Fertilizer ("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 makes the following findings:

- 1. Respondent is a retail facility that sells anhydrous ammonia to farmers as an agricultural nutrient and is located at 10221 Lancaster-Newark Road in Millersport, Ohio. Anhydrous ammonia is stored in two storage tanks (12,000 and 30,000 gallons) and approximately twenty 1,000-pound nurse tanks. The quantity of anhydrous ammonia at the facility is approximately 250,000 pounds.
2. Anhydrous ammonia is a regulated substance listed in Ohio Administrative Code ("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

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- determined by OAC Rule 3745-104-02, shall comply with the requirements of OAC 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. On January 3, 2000, Ohio EPA, DAPC received delegation for the RMP program from U.S. EPA.
3. Anhydrous ammonia has a threshold amount of 10,000 pounds. Respondent stores anhydrous ammonia in an amount that exceeds the threshold established in OAC 3745-104-04, and, as a result, Respondent is subject to the RMP requirements detailed in OAC Rule 3745-104-06.
  4. On February 28, 2007, an RMP audit was conducted at the facility by Ohio EPA, DAPC. It was determined that an RMP had not been submitted to Ohio EPA or U.S. EPA, in violation of OAC Rule 3745-104-38. Furthermore, eight deficiencies were discovered during the inspection. These eight deficiencies are:
    - a. Respondent failed to establish a written management system for RMP elements, as required by OAC Rule 3745-104-07.
    - b. Respondent failed to develop safety information, in violation of OAC Rule 3745-104-17.
    - c. Respondent failed to conduct a hazard analysis, in violation of OAC Rule 3745-104-18.
    - d. Respondent failed to prepare written operating procedures for the process, in violation of OAC Rule 3745-104-19.
    - e. Respondent failed to provide initial or refresher training to employees at least every three years, in violation of OAC Rule 3745-104-20.
    - f. Respondent failed to implement maintenance procedures, in violation of OAC Rule 3745-104-21.
    - g. Respondent failed to conduct an RMP compliance audit at least every three years, in violation of OAC Rule 3745-104-22.
    - h. Respondent failed to coordinate its emergency response plan with appropriate agencies, in violation of OAC Rule 3745-104-36.
  5. Ohio EPA, DAPC sent a deficiency letter in March 2007, specifying forty-five days to achieve compliance. Guidance to assist the facility in complying was provided at the time of the audit.

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6. A warning letter was issued on June 18, 2007, requesting the RMP be submitted to Ohio EPA and U.S. EPA, as well as the documentation to resolve the deficiencies discovered during the audit.
7. Ohio EPA received a copy of the RMP and the emergency response plan on July 13, 2007; however, the RMP was not submitted to the U.S. EPA.
8. Ohio EPA sent a warning letter to Respondent on September 19, 2007. A phone call was received from Respondent on September 25, 2007. Ohio EPA, DAPC explained that the RMP was required to be submitted to U.S. EPA and documentation to resolve the remaining deficiencies was required to be submitted to Ohio EPA, DAPC. Respondent indicated that the RMP would be submitted to U.S. EPA and documentation would be submitted to Ohio EPA to resolve the deficiencies immediately.
9. As of October 11, 2007, no further documentation has been submitted to resolve the deficiencies from the February 28, 2007 audit. As a result, deficiencies outlined in Findings 4(a) through (g) remain.
10. Ohio EPA auditors met with Respondent on December 6, 2007. The documentation to correct the remaining deficiencies has been received by Ohio EPA.
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 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 provide verification that an RMP was successfully submitted to U.S. EPA within thirty (30) days of the effective date of these Orders. Respondent shall continue to implement the compliant RMP program.
2. Pursuant to ORC § 3753.09, Respondent shall pay the amount of four thousand twenty dollars (\$4,020) in settlement of Ohio EPA's claim for civil penalties. 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 four thousand twenty dollars (\$4,020) 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:

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Ohio EPA  
Office of Fiscal Administration  
P.O. Box 1049  
Columbus, Ohio 43216-1049

3. A copy of the check 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  
Lazarus Government Center  
50 West Town Street, Suite 700  
Columbus, Ohio 43216-1049

#### **VI. TERMINATION**

Respondent's obligations, with the exception of paragraph 1, Section V, 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.

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### **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.

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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**

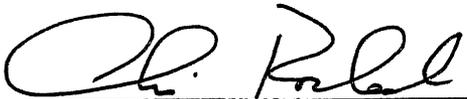
The effective date of these Orders is the date these Orders are entered into the Ohio EPA Director's journal.

**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**

  
\_\_\_\_\_  
Chris Korleski  
Director

12/27/07  
Date

**IT IS SO AGREED:**

**Millersport Fertilizer**

  
\_\_\_\_\_  
Signature  
JULIA E HOOPER  
Printed or Typed Name

12-17-07  
Date  
  
\_\_\_\_\_  
Date

OWNER / TREASURER  
Title