

OHIO E.P.A.

OCT -7 2008

BEFORE THE OHIO

ENVIRONMENTAL PROTECTION AGENCY

ENTERED DIRECTOR'S JOURNAL

In the Matter of:

Diversified Agri-Services, Inc.  
7116 South State Route 53  
McCutchenville, Ohio 44844

Director's Final Findings  
and Orders

**PREAMBLE**

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

It is agreed by the parties hereto as follows:

**I. JURISDICTION**

*John Lassiter* Date: 10-7-08

These Director's Final Findings and Orders ("Orders") are issued to Diversified Agri-Services, 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 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 the owner and operator of a facility that uses anhydrous ammonia to manufacture various liquid fertilizers and is located at 7116 South State Route 53 in McCutchenville, Ohio. Anhydrous ammonia is stored in one 11,000-gallon storage tank (approximately 53,000 pounds). The fertilizer product is sold on site to farmers.
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 determined by OAC Rule 3745-104-02, shall comply with the requirements of OAC Rule 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 Rule 3745-104-04, and, as a result, Respondent is subject to the RMP requirements detailed in OAC Rule 3745-104-06. Respondent is subject to Program Two requirements as identified in OAC Rule 3745-104-06.
4. On September 5, 2007, an RMP audit was conducted at the facility by Ohio EPA, DAPC. Eight deficiencies were discovered during the inspection.
5. Ohio EPA, DAPC sent a deficiency letter on September 18, 2007, specifying thirty days to achieve compliance and correct the eight deficiencies. Guidance to assist the facility in complying was provided at the time of the audit.
6. On October 22, 2007, Respondent requested the supporting documentation for the hazard assessment and an extension to submit the information to resolve the deficiencies discovered during the RMP audit. Ohio EPA provided the hazard assessment documentation on October 22, 2007 and informed Respondent that the RMP would be required to be corrected and resubmitted to correspond with the supporting data.
7. A warning letter was issued to Respondent on March 3, 2008 requesting that the documentation to resolve the deficiencies be submitted within fourteen days of receipt of the warning letter.
8. Respondent requested an extension in a letter dated March 11, 2008.
9. Respondent provided documentation on March 20, 2008. After reviewing the information, it was determined that four of the eight deficiencies were not remedied, and that a fifth deficiency was not fully remedied in that the RMP was not corrected to include the correct the hazard assessment documentation provided by Ohio EPA.
10. A warning letter was issued to Respondent on April 14, 2008 requesting that the remaining deficiencies be remedied within seven days of receipt.
11. On May 8, 2008, Respondent provided documentation to resolve one of the remaining deficiencies.

12. As of June 1, 2008, no further documentation has been submitted to resolve the remaining deficiencies from the September 5, 2007 audit, in accordance with the oft-repeated and extended deadlines. As a result, the following deficiencies remained:
- a. Respondent failed to submit to Ohio EPA and US EPA a correct RMP as required by OAC rule 3745-104-38. Respondent was originally cited for not maintaining documentation for the worst case and alternative release scenarios, namely the correct estimated population within the potentially affected area, in violation of OAC Rule 3745-104-15. Ohio EPA supplied the correct population data to Respondent, but Respondent must include that correct information in the RMP as required by OAC rules 3745-104-15 and 3745-104-12, and submit the corrected RMP to Ohio EPA and US EPA.
  - b. Respondent failed in at least the last five years to conduct a review of hazards associated with the presence of ammonia and the process and procedures in which and by which it is used. This is a violation of OAC Rule 3745-104-18, which provides:
    - (A) The owner or operator shall conduct a review of the hazards associated with the regulated substances, process, and procedures. The review shall identify the following:
      - (1) The hazards associated with the process and regulated substances;
      - (2) Opportunities for equipment malfunctions or human errors that could cause an accidental release;
      - (3) The safeguards used or needed to control the hazards or prevent equipment malfunction or human error; and
      - (4) Any steps used or needed to detect or monitor releases.
    - (D) The review shall be updated at least once every five years.
  - c. Respondent failed to prepare written operating procedures for the covered process, in violation of OAC Rule 3745-104-19, which provides:

“(A) The owner or operator shall prepare written operating procedures that provide clear instructions or steps for safely conducting activities associated with each covered process consistent with the safety information for that

\* \* \*

process. Operating procedures or instructions provided by equipment manufacturers or developed by persons or organizations knowledgeable about the process and equipment may be used as a basis for a stationary source's operating procedures.

(B) The procedures shall address the following:

(1) Initial startup;

(2) Normal operations;

(3) Temporary operations;

(4) Emergency shutdown and operations;

(5) Normal shutdown;

(6) Startup following a normal or emergency shutdown or a major change that requires a hazard review;

(7) Consequences of deviations and steps required to correct or avoid deviations; and

(8) Equipment inspections.”

Respondent only had procedures prepared for producing fertilizer, not for filling the ammonia storage tank or for emergency shutdown.

d. Respondent failed to implement maintenance procedures. This is in violation of OAC Rule 3745-104-21, which provides in part:

“(A) The owner or operator shall prepare and implement procedures to maintain the on-going mechanical integrity of the process equipment. The owner or operator may use procedures or instructions provided by covered process equipment vendors or procedures in federal or state regulations or industry codes as the basis for stationary source maintenance procedures.”

e. Respondent failed to conduct an RMP compliance audit at least every three years. Respondent could supply no documentation of ever having conducted a compliance audit. This is in violation of OAC Rule 3745-104-22(A), which provides:

“(A) The owner or operator shall certify that they have evaluated compliance

with the provisions of rules 3745-104-17 to 3745-104-23 of the Administrative Code at least every three years to verify that the procedures and practices developed under chapter 3745-104 of the Administrative Code are adequate and are being followed.”

13. With submittals to Ohio EPA on June 4 and July 10, Respondent has corrected the continuing deficiencies noted in items 12.b., 12.c and 12.d above. Respondent has still not corrected deficiencies noted in items 12.a (resubmit RMP) and 12.e (conduct RMP compliance audit).
14. 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 revise the RMP to reflect the correct potentially affected population in the worst case and alternative release scenarios, submit the documentation to correct the RMP program deficiency identified in Findings 12(e) within thirty (30) days of the effective date of these Orders, and resubmit the RMP to Ohio EPA and U.S. EPA. Thereafter, Respondent shall implement the compliant RMP program.
2. Pursuant to ORC § 3753.09, Respondent shall pay the amount of four thousand two hundred dollars (\$4,200) 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 two hundred twelve dollars (\$4,200) 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:

Ohio EPA  
Office of Fiscal Administration  
P.O. Box 1049  
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.

## **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**

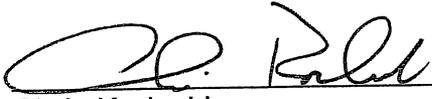
The effective date of these Orders is the date these Orders are entered into the Ohio EPA Director's journal.

#### **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.

**IT IS SO ORDERED AND AGREED:**

**Ohio Environmental Protection Agency**

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

10/1/08  
Date

**IT IS SO AGREED:**

**Diversified Agri-Services, Inc.**

  
\_\_\_\_\_  
David Karsner, President

9-23-08  
Date