

BEFORE THE OHIO
ENVIRONMENTAL PROTECTION AGENCY

OHIO E.P.A.
SEP -3 2000
ENTERED DIRECTOR'S JOURNAL

In the Matter of:

Meijer, Inc.
4200 S. County Road 25A
Tipp City, Ohio 45371

:
:
:

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 Meijer, 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 owns and operates a storage facility located at 4200 S. County Road 25A in Tipp City, Ohio. Anhydrous ammonia is used in the refrigeration process. The quantity of anhydrous ammonia at the facility is approximately 44,000 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

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.

By: Debra Lassiter Date: 9-3-08

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. On January 3, 2000, Ohio EPA, DAPC received delegation for the RMP program from U.S. EPA.

3. Anhydrous ammonia has a threshold 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 Rule OAC 3745-104-06.
4. On May 11, 2001, an RMP audit was conducted at the facility by Ohio EPA, DAPC. Four deficiencies were discovered during the inspection. The four deficiencies were:
 - a. Respondent failed to correctly calculate the worst case and alternative release scenarios, in violation of OAC Rules 3745-104-10 and -11.
 - b. Respondent failed to have complete process safety information, in violation of OAC Rule 3745-104-24.
 - c. Respondent failed to conduct a process hazard analysis every five years, in violation of OAC Rule 3745-104-25.
 - d. Respondent failed to have a formal procedure for pre-startup reviews, in violation of OAC Rule 3745-104-30.
5. Ohio EPA, DAPC sent a deficiency letter on May 11, 2001 requiring that the above deficiencies be corrected.
6. On April 26, 2007, the second five-year audit was conducted at the facility by Ohio EPA, DAPC. Six deficiencies were discovered during the inspection. The six deficiencies were:
 - a. Respondent failed to develop a written management system, in violation of OAC Rule 3745-104-07.
 - b. Respondent failed to maintain supporting documentation for the hazard assessment, in violation of OAC Rule 3745-104-15.
 - c. Respondent failed to have complete process safety information, in violation of OAC Rule 3745-104-24.

- d. Respondent failed to conduct a process hazard analysis at least every five years, in violation of OAC Rule 3745-104-25.
 - e. Respondent failed to establish and implement a written mechanical integrity procedure for critical process equipment, in violation of OAC Rule 3745-104-28.
 - f. Respondent failed to conduct RMP compliance audits at least every three years, in violation of OAC Rule 3745-104-31.
7. Ohio EPA, DAPC sent a deficiency letter on May 9, 2007 specifying thirty days to achieve compliance. Guidance to assist the facility in complying was enclosed.
 8. On June 6, 2007, a meeting was held with Respondent. Documentation to resolve deficiencies 6(a) and (e) was provided by Respondent. However, no inspection and test documentation were provided to support the mechanical integrity program, as required by OAC Rule 3745-104-28.
 9. On June 13, 2007, Ohio EPA received a letter requesting an extension for the time for compliance on the remaining violations due to the hiring of an outside firm to assist with the program. No date for the extension was provided in the letter.
 10. Documentation dated August 1, 2007 was received by Ohio EPA, DAPC that included a process hazard analysis and an RMP compliance audit. The process hazard analysis did not meet all the requirements of OAC Rule 3745-104-25.
 11. On August 3, 2007, Ohio EPA received documentation for the relief valve design and design basis, as required by OAC Rule 3745-104-24.
 12. On August 29, 2007, Ohio EPA received documentation for the ventilation system design and design basis, as required by OAC Rule 3745-104-24.
 13. A warning letter was issued to Respondent on September 25, 2007 requesting all the remaining documentation for the following deficiencies:
 - a. Respondent failed to submit supporting documentation for the hazard assessment, in violation of OAC Rule 3745-104-15.
 - b. Respondent failed to have complete process safety information, in violation of OAC Rule 3745-104-24.
 - c. Respondent failed to conduct a process hazard analysis that meets the requirements of OAC Rule 3745-104-25.

- d. Respondent failed to submit inspection and test documentation for critical process equipment, in violation of OAC Rule 3745-104-28.
14. On October 15, 2007, Ohio EPA received documentation to resolve the remaining deficiencies, except for Finding 13(a).
15. On May 3, 2008, the documentation from Finding 13(a) was submitted via e-mail.
16. ORC § 3753.06 prohibits violations of provisions ORC Chapter 3753 or any rule adopted or issued under it. Respondent violated rules adopted under ORC Chapter 3753, specifically, the rules cited in Finding 6.
17. 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 continue to implement the compliant RMP program.
2. Pursuant to ORC § 3753.09, Respondent shall pay the amount of sixteen thousand four hundred fifty dollars (\$16,450) 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 thirteen thousand one hundred sixty dollars (\$13,160) 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
3. In lieu of paying the remaining three thousand two hundred ninety dollars (\$3,290) of the civil penalty, Respondent shall fund a Supplemental Environmental Project ("SEP") by making a contribution in the amount of \$3,290 to the Ohio EPA's Clean Diesel School Bus Fund (Fund 5CD0). Respondent shall tender an official check made payable to "Treasurer, State of Ohio" for \$3,290. The official check shall be submitted to Brenda Case, or her successor, together with a letter identifying Respondent, the facility, and fund 5CD0 to:

Ohio EPA
Office of Fiscal Administration
Lazarus Government Center
50 West Town Street, Suite 700
Columbus, Ohio 43216-1049

4. A copy of each of the above checks 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

5. Should Respondent fail to fund the SEP within the required timeframe set forth in Order 3, Respondent shall immediately to Ohio EPA \$3,290 of the civil penalty in accordance with the procedures in Order 2.

VI. TERMINATION

Respondent's obligations 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

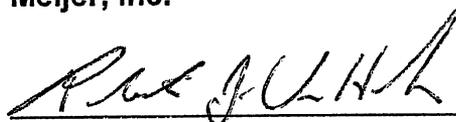


Chris Korleski
Director

8/28/08
Date

IT IS SO AGREED:

Meijer, Inc.



Signature

07-25-07
Date

Robert J. Verheulen
Printed or Typed Name

07-25-07
Date

V.P.
Title