BEFORE THE OHIO

ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:	:	
	:	
TEPPCO	:	Directors Final Findings
48963 County Road 275	:	and Orders
Coshocton, Ohio 43812	:	

OHIO E.P.A.
JUL -9 2008
ENTERED DIRECTOR'S JOURNAL

PREAMBLE

It is agreed by the parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to TEPPCO ("Respondent") pursuant to the authority vested in the Director of the Ohio Environmental Protection Agency ("Ohio EPA") under Ohio Revised Code ("ORC") §§ 3753.01 and 3753.08.

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 identified below 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 Ohio EPA has determined the following findings:

1. Respondent owns and operates a wholesale propane terminal located at 48963 County Road 275 in Coshocton, Ohio. The facility receives propane from an underground pipeline and stores propane for delivery to propane wholesale customers. The propane is stored in three above ground storage tanks for a total of 970,000 lbs. Respondent has had more than a threshold quantity of a "regulated substance," namely propane, as defined in OAC Rule 3745-104-01 since the 1970's. The Risk Management Plan ("RMP") threshold amount of propane is 10,000 pounds. The facility has also stored 47,600 lbs. of ethyl mercaptan in an

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: _____ Date: 7-9-08

above ground storage tank since 2005. This chemical is added to the propane during truck filling. The ethyl mercaptan is used as an odorant to aid in propane leak detection. The RMP threshold amount of ethyl mercaptan is 10,000 lbs.

2. Pursuant to Ohio Administrative Code ("OAC") Rule 3745-104-02, an owner or operator of a stationary source that has more than a threshold quantity of a regulated substance in a process, shall comply with the requirements of this Rule by submitting a RMP no later than June 21, 1999. Respondent did not submit a RMP until June 2002 for the propane and, did not submit a RMP for the ethyl mercaptan until 2007.

3. On June 13, 2007, Ohio EPA, Division of Air Pollution Control ("DAPC") inspectors conducted an audit at Respondent's facility and discovered that Respondent failed to submit a RMP for propane in 1999, as required by OAC Rule 3745-104-05(A)(1). An RMP was not submitted until June 2002. Respondent failed to submit a RMP for ethyl mercaptan on the date the chemical was first present at the facility and above the threshold amount, as required by OAC Rule 3745-104-05(A)(3). The ethyl mercaptan storage was increased above the threshold amount in September 2005, and was not reported until May 2007.

4. On July 2, 2007, the Ohio EPA auditor sent a deficiency letter to the Respondent's facility, requiring them to verify and explain the deficiencies in Finding 3 of these Orders or dispute them. Respondent was also required to correct other RMP prevention program deficiencies found during the audit.

5. On July 30, 2007, the Ohio EPA auditor sent an extension letter at the Respondent's request, extending the date for documentation submittal until October 2, 2007.

6. On October 3, 2007, the Ohio EPA received the information pertaining to the other deficiencies in the July 2, 2007, letter; however, the documentation pertaining to the late submittals of the RMPs for propane and ethyl mercaptan was not submitted.

7. On November 1, 2007, the Ohio EPA auditor sent a warning letter to Respondent regarding the continuing deficiencies described in Finding 6 of these Orders.

8. On November 15, 2007, the Ohio EPA auditor discussed the deficiencies via phone call with the Respondent. Respondent stated that they were in error by not submitting the initial RMP for propane in 1999 and the RMP for the ethyl mercaptan in 2005.

9. ORC § 3753.06 prohibits violations of provisions of ORC Chapter 3753 or any rule

adopted or issued under it. From June 1999 to June 2002, and from September 2005, to May 2007, Respondent violated rules adopted under ORC Chapter 3753, specifically, the rules cited in Finding 3.

10. On May 20, 2008, a negotiation meeting was held between the Respondent and the Ohio EPA. The facility officials stated that they do not agree TEPPCO is subject to RMP rules because they believe that the Department of Transportation (DOT) regulates the entire facility, including the propane storage tanks. After discussing the matter with the U.S. EPA, Ohio EPA continues to maintain the position that the facility is subject to the RMP Rule and that the RMP is required to be implemented according to 49 CFR Part 195 or an equivalent DOT-certified state regulation. The Ohio EPA adopted the U.S. EPA's, RMP rules and the U.S. EPA is currently implementing the RMP at other facilities similar to this one, such as the Sea-3 terminals in Texas. The Ohio EPA adopted the U.S. EPA, RMP rules.

11. The Director has given consideration to, and based on 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. Pursuant to ORC § 3753.09, Respondent is assessed a civil penalty in the amount of eleven thousand twenty dollars ($11,020) in settlement of Ohio EPA's claim for civil penalties. Within fourteen (14) days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of eight thousand eight hundred sixteen dollars ($8,816) in settlement of Ohio EPA's claims for civil penalties, which will be deposited into the Risk Management Plan fund established pursuant to ORC § 3753.05. Payment shall be made by an official check made payable to "Treasurer, State of Ohio" for $8,816. The official check shall be submitted to Ohio EPA, Office of Fiscal Administration, attention Brenda Case, P.O. Box 1049, Columbus, Ohio 43216-1049, together with a letter identifying the Respondent and the facility.

2. In lieu of paying the remaining two thousand two-hundred four dollars ($2,204) of the civil penalty, Respondent shall fund a Supplemental Environmental Project ("SEP") by making a contribution in the amount of $2,204 to the Ohio EPA's fund for the Clean Diesel School Bus Program (Fund 5CD0). Respondent shall make payment within thirty (30) days after the effective date of these Orders by tendering an official check made payable to "Treasurer, State of Ohio" for $2,204. The official

check shall be submitted to Brenda Case, together with a letter identifying the Respondent, the facility, and Fund 5CD0, to the above-stated address.

3. 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
50 West Town St., Suite 700
P. O. Box 1049
Columbus, Ohio 43216

4. Should Respondent fail to fund the SEP within the required time frame set forth in Order 2, Respondent shall immediately pay to Ohio EPA $2,204 of the civil penalty in accordance with the procedures in Order 2.

VI. TERMINATION

Respondent's obligations under these Orders shall terminate upon Ohio EPA's receipt of the official checks, 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 the 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:

Kimberly Joseph
Ohio Environmental Protection Agency
DAPC
50 West Town St., Suite 700
P.O. Box 1049
Columbus, Ohio 43216-1049

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

Date 7/7/08

IT IS SO AGREED:

TEPPCO

Signature

Date 6/9/08

Terry Hurlburt
Printed or Typed Name

Sr VP Operations
Title