

BEFORE THE OHIO
ENVIRONMENTAL PROTECTION AGENCY

OHIO E.P.A.
MAR 10 2010

ENTERED DIRECTOR'S JOURNAL

In the Matter of:

H.B. Fuller Company
4440 Malsbary Road
Blue Ash, Ohio 45242

Directors 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

By: John Lussler Date: 3-10-10

These Director's Final Findings and Orders ("Orders") are issued to H.B. Fuller Company ("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 polymer emulsion glue factory that makes water based adhesives. The primary activity involves the polymerization of a vinyl acetate monomer ("VAM"). This facility is located at 4440 Malsbary Road in Blue Ash, Ohio. The VAM is stored in two above-ground storage tanks, reactors, and a railcar for a total of approximately 648,000 lbs. Respondent has more than a threshold quantity of a "regulated substance," namely VAM, as defined in OAC Rule 3745-104-01. The Risk Management Plan ("RMP") threshold amount for VAM is 15,000 pounds.
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 an RMP no

later than June 21, 1999. Respondent submitted an RMP in June 1999 as required.

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3. On December 19, 2001, Ohio EPA, Division of Air Pollution Control ("DAPC") inspectors conducted an audit at Respondent's facility and discovered four rule violations. No penalty was assessed, and Respondent corrected the violations after Ohio EPA gave Respondent notice of the violations.
 4. On March 26, 2008, the Ohio EPA conducted a second audit at Respondent's facility and discovered seven violations of the rules. The violations were as follows:
 - (a) Respondent failed to maintain records for the hazard assessment population data, in violation of OAC Rule 3745-104-15(E).
 - (b) Respondent failed to address the recommendations in the process hazard analysis (PHA), in violation of OAC Rule 3745-104-25(E).
 - (c) Respondent failed to develop and implement all of the written operating procedures for the process, in violation of OAC Rule 3745-104-26. (This is a repeat violation.)
 - (d) Respondent failed to provide refresher training pertaining to the standard operating procedures at least every three years, in violation of OAC Rule 3745-104-27(B). (This is a repeat violation.)
 - (e) Respondent failed to correct deficiencies in equipment before further use, in violation of OAC Rule 3745-104-28(E).
 - (f) Respondent failed to implement a contractor program, in violation of OAC Rule 3745-104-35.
 - (g) Respondent failed to maintain a hard copy of the emergency response plan and coordinate the plan with emergency responders, in violation of OAC 3745-104-36.
 5. The violations referenced in subparagraphs (c) and (d) of Finding 4 are repeats of violations cited in the 2001 audit.
 6. On April 3, 2008, the Ohio EPA sent Respondent a deficiency letter requiring the violations to be corrected and documentation submitted within thirty days of receipt of the letter.
 7. On May 5, 2008, Respondent submitted documentation pertaining to the violations; however, only violations (f) and (g) of Finding 4 were remedied.

8. As of November 17, 2009, all of the violations were remedied except for fourteen PHA recommendations that pertain to the shut down of the process indefinitely.

9. During the negotiations, Respondent proposed to shut down and remove from the RMP Program the process using the RMP regulated chemical VAM on December 14, 2009. In order to be removed from the RMP program, the chemical VAM shall not be on site at any given time over the threshold amount of 15,000 pounds.
10. ORC § 3753.06 prohibits violations of provisions of ORC Chapter 3753 or any rule adopted or issued under it. From March 26, 2008 (the second compliance audit), to the present, Respondent violated rules adopted under ORC Chapter 3753, specifically, the rules cited in Findings 4(a), (b), (c), (d), and (f).
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. Within thirty (30) days after the effective date of these Orders, Respondent shall submit a schedule for the Supplemental Environmental Project (SEP) that was approved by the Ohio EPA (the installation of the heat exchangers for the boiler), which shall include the construction completion date for the SEP.
2. Since the process has been shut down, the chemical shall be removed from the facility over the threshold amount, and Respondent shall immediately de-register their VAM process by notifying the U.S. EPA and the Ohio EPA of the removal of the chemical. During the time VAM is de-registered, Respondent is not required to comply with the RMP Program.
3. If at any time the chemical, VAM, is on site over the threshold amount after the de-registration, Respondent shall register and submit an RMP to U.S. EPA and Ohio EPA, comply with and implement all applicable laws and regulations regarding the RMP Program, and complete all recommendations that were not resolved from the 2003 PHA. The following are the incomplete recommendations from the PHA:

Recommendation 3: The potential may exist for the static electricity to build up during the transfer of VAM into the process vessels.

Recommendation 13: When the transfer piping was installed several valves were placed

in un-rated areas.

Recommendation 63: There is a potential to overfill process vessels rated for atmospheric pressure should the existing controls fail.

Recommendation 71: The process vessels rated for atmospheric pressure should be protected from the high pressure.

Recommendation 86: Update the controls to automatically stop all additions once a pre-determined level is reached in the process vessel rated for atmospheric pressure.

Recommendation 90: Verify the operation of the interlock logic throughout the control scheme.

Recommendation 96: Evaluate how out of limit process issues are communicated to the operators.

Recommendation 114: Determine the appropriate rating for the emergency relief system using specific process operating parameters.

Recommendation 116: Include the operating logic appropriate controls to prevent the overfill of pressure rated vessels.

Recommendation 118: Add an alarm and control to prevent a situation where reactants are being added to an unagitated process vessel.

Recommendation 120: Add an alarm and control to prevent a situation where reactants are being added to reacting mixture that exceeds the safe operating temperature within a pressure rated vessel.

Recommendation 123: Add a system to the pressure rated vessels to ensure that the vent line is always open during a reaction.

Recommendation 156: Review the cooling control system logic for the potential cooling shutdown during operations.

Recommendation 177: Remove the remaining non-hazardous contents of the overflow tank.

Recommendation 179: Determine the appropriate size for the emergency relief system piping using specific process operating parameters.

Recommendation: 182: Prevent ignition of fumes emanating from the overflow tank.

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4. Pursuant to ORC § 3753.09, Respondent is assessed a civil penalty in the amount of sixteen thousand eight hundred seventy five dollars (\$16,875) in settlement of Ohio EPA's claim for civil penalties. Within sixty (60) days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of six thousand dollars (\$6,000) 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 six thousand dollars (\$6,000). The official check shall be submitted to Ohio EPA, Office of Fiscal Administration, attention Brenda Case, 50 West Town Street, P.O. Box 1049, Columbus, Ohio 43216-1049, together with a letter identifying the Respondent and the facility.
 5. In lieu of paying the remaining ten thousand eight-hundred seventy-five dollars (\$10,875) of the civil penalty, Respondent shall fund two SEPs by making a contribution in the amount of three thousand three hundred seventy-five dollars (\$3,375) 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 three thousand three hundred seventy-five dollars (\$3,375). 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.
 6. In lieu of the payment of the remaining seven thousand five hundred dollars (\$7,500), Respondent shall fund the agreed upon SEP by installing heat exchangers on the boiler at the facility, pursuant to the schedule in Order 1.
 7. 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 Environmental Protection Agency
Division of Air Pollution Control
50 West Town St., Suite 700
P. O. Box 1049
Columbus, Ohio 43216

8. Should Respondent fail to fund the SEP in Order 5 within the required time frame, Respondent shall immediately pay to Ohio EPA, three thousand three hundred seventy-five dollars (\$3,375.00).

9. Should Respondent fail to fund the SEP in Order 6, within the required time frame, Respondent shall immediately pay to the Ohio EPA, seven thousand five hundred dollars (\$7,500).
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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.

This 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 a "facility official" who is in charge of a principal business function of Respondent.

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
Division of Air Pollution Control
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

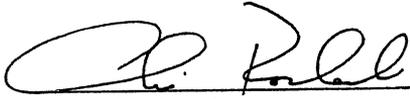
The effective date of these Orders is the date these Orders are entered into the Ohio EPA Director's journal.

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

3/8/10
Date

IT IS SO AGREED:

H.B. Fuller Company


Signature

2/22/10
Date

James I. Owens

Printed or Typed Name

SR. Vice President
Title