

BEFORE THE OHIO
ENVIRONMENTAL PROTECTION AGENCY

OHIO E.P.A.

MAR 28 2012

ENTERED DIRECTOR'S JOURNAL

In the Matter of:

Koch Foods of Cincinnati LLC
4100 Port Union Road
Fairfield, Ohio 45014

Director's Final Findings
and Orders

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.

PREAMBLE

It is agreed by the parties hereto as follows:

By: Joseph Hasseler Date: 3/28/12

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to Koch Foods of Cincinnati LLC ("Respondent") pursuant to the authority vested in the Director of the Ohio Environmental Protection Agency ("Ohio EPA") under Ohio Revised Code ("ORC") § 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 (as hereinafter defined) 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 makes the following findings:

1. Respondent owns and operates Koch Foods of Cincinnati LLC, a refrigeration facility that cooks, packages, and sells chicken parts to various customers. Anhydrous ammonia is brought in by the supplier for use in the refrigeration units. The total inventory of anhydrous ammonia stored in vessels and piping is 46,000 pounds. The process for which this regulated substance is employed is a "covered process" within the meaning of OAC 3745-104-01. The covered process at Respondent's facility is subject to Program 3 of this rule because the chemical ammonia is subject to OSHA Process Safety Management, and the worst-case scenario has population within the distance to the endpoint of the ammonia release.

2. Pursuant to OAC Rule 3745-104-02, an owner or operator of a stationary source, which has more than a threshold quantity of a regulated substance in a process, shall comply with the requirements of this rule by submitting a Risk Management Plan ("RMP") to Ohio EPA by no later than June 21, 1999. The threshold amount for anhydrous ammonia is 10,000 pounds. Respondent submitted RMPs to Ohio EPA in 1999, 2005, and 2011. The RMPs were supposed to be submitted in 2004 and 2010, according to OAC Rule 3745-104-49(B)(1) that requires the RMPs to be updated every five years.
3. On November 4, 2004, an inspector with the Ohio EPA, Division of Air Pollution Control ("DAPC") conducted the initial five-year inspection at Respondent's facility, and discovered ten rule violations. No penalty was assessed, but the Respondent was required to correct the violations and bring the facility into compliance. All of the violations were corrected.
4. On November 30, 2010, Ohio EPA conducted a second five-year inspection at Respondent's facility and discovered nine violations of the rules, which included six violations that were cited from the first inspection. The violations are as follows:
 - (a) Respondent failed to maintain the records for the worst case and alternative scenarios, in violation of OAC Rule 3745-104-15. This is a repeat violation from the 2004 inspection.
 - (b) Respondent failed to compile information concerning the technology of the process including at least the maximum intended inventory, in violation of OAC Rule 3745-104-24(C)(1)(c).
 - (c) Respondent failed to conduct a process hazard analysis ("PHA") every five years and failed to complete the recommendations identified from the 2005 and 2010 PHAs, in violation of OAC Rule 3745-104-25. This is a repeat violation from the 2004, inspection.
 - (d) Respondent failed to provide training every three years to ensure the operator understands and adheres to current operating procedures and to ascertain that each employee has understood the training, in violation of OAC Rule 3745-104-27. This is a repeat violation from the 2004, inspection.
 - (e) Respondent failed to create and implement a mechanical integrity program, in violation of OAC Rule 3745-101-28. This is a repeat violation from the 2004, inspection.
 - (f) Respondent did not promptly determine and document an appropriate response to each of the findings identified in the 2008 compliance audit, in violation of OAC Rule 3745-104-31. This is a repeat violation from the 2004, inspection.

- (g) Respondent failed to develop and implement an employee participation program, in violation of OAC Rule 3745-104-33.
 - (h) Respondent failed to implement a contractor program, in violation of OAC Rule 3745-104-35. This is a repeat violation from the 2004, inspection.
 - (i) Respondent failed to revise, update and submit the RMP within five years of its most recent update, in violation of OAC Rule 3745-104-49(B)(1).
5. A letter dated January 3, 2011, was sent to Respondent requiring the above deficiencies to be corrected within thirty days of receipt of the letter.
 6. On January 28, 2011, Respondent submitted documentation to remedy the violations. Findings 4(a) and 4(b) were resolved.
 7. On March 10, 2011, a warning letter dated March 10, 2011, was sent electronically to the facility, again requiring the remaining deficiencies to be corrected.
 8. On March 28, 2011, Respondent submitted documentation that resolved Finding 4(g).
 9. On February 20, 2012, Respondent submitted the remaining documentation to resolve all of the Findings except the IIAR Bulletin 110 five year inspection.
 10. ORC § 3753.06 prohibits violations of the provisions of ORC Chapter 3753 or any rule adopted or issued under it. Respondent violated rules adopted under ORC Chapter 3753, specifically, the rules cited in Findings 4(a), (b), (h), and (i), from 2005 (the year after the first inspection), to January 28, 2011 (when correct documentation was submitted): Finding 4(g) from 2005 (the year after the first inspection), to March 28, 2011 (when correct documentation was submitted), and 4(c) through 4(f) from 2005, to the present. Therefore, Respondent violated ORC § 3753.06 as a result of these rule violations.
 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. Within sixty (60) days after the effective date of these Orders, Respondent shall submit the IIAR Bulletin 110 five year inspection to complete Finding 4(e).

2. Pursuant to ORC § 3753.09, Respondent is assessed a civil penalty in the amount of twenty-five thousand five hundred and sixty dollars (\$25,560) 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 twenty thousand four hundred and forty-eight dollars (\$20,448) 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 \$20,448. 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.
3. In lieu of paying the remaining twenty percent of the civil penalty, Respondent shall fund a Supplemental Environmental Project ("SEP") by making a contribution in the amount of five thousand one hundred and twelve dollars (\$5,112) to the Ohio EPA's 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 \$5,112. 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.
4. A copy of each of the above checks shall be sent to Tom Kalman, Acting 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
5. Should Respondent fail to fund the SEP within the required time frame set forth in Order 3, Respondent shall immediately pay to Ohio EPA five thousand one hundred and twelve dollars (\$5,112) of the civil penalty in accordance with the procedures in Order 3.

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 the 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 corporate officer 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 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 statute or regulation applicability 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

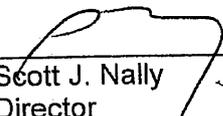
The effective date of these Orders is the date these Orders are entered into the Ohio EPA Director's journal.

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.

ORDERED AND AGREED:

Ohio Environmental Protection Agency



Scott J. Nally
Director

3/23/12
Date

AGREED:

Koch Foods of Cincinnati LLC



Signature

3-2-2012
Date

WILLIAM CARLOTTA
Printed or Typed Name

SAFETY DIRECTOR
Title