BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

OHIO E.P.A.
FEB 27 2004
ENTERED DIRECTOR'S JOURNAL

In the Matter of:	:	
	:	
L&L Transportation, LLC	:	**Director's Final Findings and Orders**
3825 U.S. 6	:	
P.O. Box 490	:	
Waterloo, IN 46793	:	
	:	
Respondent	:	

PREAMBLE

It is agreed by the parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to L&L Transportation, LLC, ("Respondent"), pursuant to the authority vested in the Director of the Ohio Environmental Protection Agency ("Ohio EPA") under Ohio Revised Code ("ORC") §§ 6111.03 and 3745.01.

II. PARTIES BOUND

These Orders shall apply to and be binding upon Respondent and its successors in interest liable under Ohio law. No change in ownership of 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 6111. and the rules promulgated thereunder.

IV. FINDINGS

The Director of Ohio EPA has determined the following findings:

1. Respondent, a subsidiary of Inergy Propane, LLC, Kansas City, Missouri, has more than 25 company-owned trucks, more than 80 trailers and the ability to lease up to 25 additional trailers during peak times. Respondent operates in 19 states, from Missouri north to New York and south to Florida, with the majority of its hauling capacity located in the Midwest, Georgia, Florida and North Carolina.

2. Respondent is registered, in good standing status, with the Ohio Secretary of State as a foreign limited liability company, under the name of L&L Transportation Services, LLC.

I certify this to be a true and accurate copy of the official document as filed in the records of the Ohio Environmental Protection Agency.
By: [signature] Date 2/27/04

3. On June 9, 2001, at approximately 7:00 p.m., two of Respondent's anhydrous ammonia ("NH_3"), transport trucks made a delivery to Harvest Land Co-op, 100 South Street, Pitsburg, Darke County.

4. The two trucks were hooked together by a hose, with the lead truck pumping into the Harvest Land Co-op's bulk storage tanks. The transfer hose from the lead truck into the bulk storage tanks was owned by Respondent and labeled "Dayco 7232CGA Type 1 hose" and "Caution for LP use only." Said transfer hose was out of date as of April 1995, in that the hose was not replaced within five years after the date of manufacture, as required by Ohio Administrative Code ("OAC") Rule 901:5-3-08(F).

5. At approximately 7:15 p.m., said transfer hose ruptured, causing a release of approximately 12.5 tons (25,000 pounds), as determined by Respondent, of NH_3 in both liquid and vapor phase. A cloud of NH_3 covered the area, with Respondent's truck driver unable to engage the emergency shut-off valve from the lead truck, before exiting the area for safety reasons.

6. In order for personnel to enter the area to close valves and perform other emergency work, fire crews used water spray to knock down the NH_3 vapors in the area of the release. A storm water catch basin was located within eighty (80) yards of the release site, at the southeast corner of the property, and flowed north into Ludlow Creek, approximately one-quarter mile away, and subsequently to the Stillwater River.

7. Released NH_3 and ammonia contaminated water entered the storm water catch basin, impacting both the Creek and River, and creating (because of back draft) a vapor and odor exposure problem in Pitsburg, forcing an evacuation of the area as a precautionary measure.

8. A cloudiness and ammonia odor was observed in Ludlow Creek.

9. Ammonia was detected in concentrations of at least 175 mg/l in Ludlow Creek. At the confluence with the Stillwater River, the ammonia concentration was detected at over 10 ppm, subsequently causing the West Milton water treatment plant to shut down pumping operations as a precautionary measure.

10. The release resulted in the killing of 103,313 fish, frogs, snails, turtles, and other wildlife, with Respondent assessed and paying a fine of $23,889.58 to the Ohio Department of Natural Resources, Division of Wildlife.

11. Ludlow Creek and the Stillwater River are waters of state as defined by ORC § 6111.01.

12. ORC § 6111.04 prohibits any person who does not hold a valid, unexpired National Pollutant Discharge Elimination System ("NPDES") permit from causing pollution or placing any sewage, sludge, sludge materials, industrial waste, or other wastes in a location where they cause pollution to any waters of the state.

13. The ammonia discharged to Ludlow Creek as a result of the spill caused a violation of OAC Rule 3745-1-07, Table 7-1, which lists statewide water quality criteria for the protection of aquatic life. According to OAC Rule 3745-1-21, Ludlow Creek, is designated as a modified warm water habitat for aquatic life. The ammonia detected in Ludlow Creek was in exceedance of OAC Rule 3745-1-07, Table 2, which lists the outside mixing zone maximum total ammonia-nitrogen criteria for warm water habitats.

14. ORC § 6111.07 provides that no person shall violate or fail to perform any duty imposed by ORC §§ 6111.01 to 6111.08.

15. The aforementioned release to waters of the state caused by Respondent is a violation of ORC §§ 6111.04 and 6111.07.

16. The aforementioned release to waters of the state by Respondent caused exceedances of the criteria applicable to all waters as defined by OAC Rule 3745-1-04. OAC Rule 3745-1-04(A) states that waters shall be free from suspended solids or other substances that enter the waters as a result of human activity and that will settle to form putrescent or otherwise objectionable sludge deposits, or that will adversely affect aquatic life; OAC Rule 3745-1-04(C) states that waters shall be free from materials entering the waters as a result of human activity producing color, odor or other conditions in such a degree as to create a nuisance. OAC Rule 3745-1-04(D) provides that waters shall be free from substances entering the waters as a result of human activity in concentrations that are toxic or harmful to human, animal or aquatic life and/or are rapidly lethal in the mixing zone.

17. In the Darke County Municipal Court, Respondent entered a plea of no contest to a criminal charge of violation of ORC § 905.40(A), having transferred NH_3 to a storage tank in a transfer hose that failed to meet the printed information standards set forth in and required by, OAC Rule 901:5-3-08(E), a rule of the Ohio Department of Agriculture.

18. In a Judgement Entry, dated November 29, 2001, the Court accepted Respondent's plea and ordered the payment of a fine.

19. Respondent has informed Ohio EPA of the following:

Subsequent to the June 9, 2001, ammonia incident, L & L Transportation, LLC has implemented and/or enhanced its employee education and training courses concerning ammonia handling, transportation, equipment usage and inspection, and emergency response. The L & L training and documentation is now very product-specific, and is based on the most conservative and restrictive regulations of all of the states within which L & L transacts business.

L & L engaged in the following actions immediately after the release:

1. Confirmed that there are no LP hoses in ammonia service, and no ammonia hoses in LP service;

2. Confirmed that there are no ammonia hoses in ammonia service beyond the five year Ohio Department of Agriculture regulation or the manufacturer's expiration date, if less than five years; and

3. Implemented a company policy banning the practice of tandeming loaded trailers.

L & L has become more knowledgeable concerning the regulations covering LP and ammonia hoses, and the risk of hose failure in the delivery process. As a result, L & L has implemented the following hose-related policies:

1. Every hose will be separately identified, its age will be documented and it will have its own maintenance record;

2. Every hose will be annually inspected and pressure tested by L & L's garage or an alternative certified inspector and documentation of that inspection will be kept in its maintenance file. Any person inspecting a hose has the authority to place it out of service; and

3. Every hose will be visually inspected monthly by the driver and documentation of that inspection will be kept in L & L's Safety Department. Any driver inspecting a hose has the authority to place it out of service. Out of service criteria are specified in the regulations.

In addition, L & L has created specific courses for driver training designed to cover the unique Handling and Safety Practices required for each product L & L delivers. Each new driver is required to review and participate in a series of training tapes, document training related to emergency response and procedures, hands on ride-along training lasting 2-7 days, and shop-based equipment review. All drivers are also required to fulfill the HM-126F-Fundamental HAZMAT/Security Training, HM-225 Delivery Equipment Inspections Procedures and HM-232-Transportation Security Training Requirements. Annually, driver delivery refresher courses are given along with written testing on product knowledge skills and safety equipment usage.

L & L is continuing to accumulate and analyze additional state regulations regarding ammonia handling, transportation, equipment usage and inspection, and emergency response to ensure compliance and minimize the chance of ammonia-related incidents."

20. Compliance with ORC Chapter 6111. is not contingent upon the availability or receipt of financial assistance.

21. The Director has given consideration to, and based his determination on, evidence relating to the technical feasibility and economic reasonableness of complying with these Orders and to evidence relating to conditions calculated to result from compliance with these Orders, and its relation to the benefits to the people of the State to be derived from such compliance in accomplishing the purpose of ORC Chapter 6111.

V. ORDERS

1. Within thirty (30) days after the effective date of these Orders, Respondent shall pay Ohio EPA the amount of thirty thousand dollars ($30,000.00) in settlement of Ohio EPA's claims for civil penalties, which may be assessed pursuant to ORC Chapter 6111. Payment shall be made by an official check made payable to "Treasurer, State of Ohio" for the above amount. The official check shall be submitted to Ohio EPA, Office of Fiscal Administration, P.O. Box 1049, Columbus, Ohio 43216-1049, together with a letter identifying the Respondent and the site of the spill. A copy of this check shall be submitted to the Ohio EPA, Southwest District Office.

2. All documents required under these Orders, unless specified otherwise, shall be submitted to:

Ohio EPA
Southwest District Office
401 E. Fifth Street,
Dayton, Ohio 45402-2911
Attn: DSW Enforcement Group Leader

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 Surface Water 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 the Respondent. For purposes of these Orders, a responsible official is defined in OAC Rule3745-33-03(D)(1).

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 activities occurring on or at the 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. RESERVATION OF RIGHTS

Ohio EPA and Respondent each reserve all rights, privileges and causes of action, except as specifically waived in Section XI of these Orders.

XI. 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.

XII. EFFECTIVE DATE

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

XIII. 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 AGREED:
L&L Transportation, LLC

Dean Watson
By

2/3/04
Date

Dean E Watson
Print Name

Sr VP
Title

IT IS SO ORDERED AND AGREED:
Ohio Environmental Protection Agency

Christopher Jones
Christopher Jones
Director

2-26-04
Date

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