

BEFORE THE OHIO

ENVIRONMENTAL PROTECTION AGENCY

In the Matter of: : Directors Final Findings
The City of Zanesville : and Orders
1750 N. River Road :
Zanesville, Ohio 43701 :
:

PREAMBLE

It is agreed by the parties hereto as follows:

I. JURISDICTION

These Director’s Final Findings and Orders (“Orders”) are issued to The City of Zanesville (“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 facility 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 has determined the following findings:

1. Respondent operates a water treatment plant located at 1750 North River Road, in Zanesville, which is identified by Ohio EPA by facility ID 100000132714. This facility is operated as a water treatment process. Chlorine is a regulated substance listed in Ohio Administrative Code (OAC) rule 3745-104-04 and has a threshold limit of 2,500 lbs. Chlorine is used in the water treatment process for disinfection. The chlorine supply for this facility has a potential maximum quantity of 12,000 lbs stored in one-ton cylinders. Two one-ton cylinders (four thousand pounds) are located in the chlorine building and the other four one-ton cylinders (eight thousand pounds) are located outside of the building.

2. An owner or operator of a stationary source that has more than a threshold quantity of a regulated substance in a process, as determined by rule 3745-104-02 of the Administrative Code, shall comply with the requirements of this rule by submitting a Risk Management Plan (RMP) no later than June 21, 1999. The owner or operator submitted an RMP by June 21, 1999.
3. On January 14, 2003, Ohio EPA, Division of Air Pollution Control (DAPC) inspectors conducted an audit at the facility and discovered ten deficiencies. The deficiencies are as follows:
 - a) Respondent failed to provide the EPA auditors with documentation pertaining to the management system, as required by OAC rule 3745-104-07.
 - b) Respondent did not have the correct quantity of chlorine documented for the worst case scenario and the correct population data, as required by OAC rule 3745-104-10.
 - c) Respondent failed to provide EPA auditors with process safety information, as required by OAC rule 3745-104-24(C) and (D).
 - d) Respondent failed to provide EPA auditors with the team's findings and recommendations for the process hazard analysis, as required by OAC rule 3745-104-25(E).
 - e) Respondent failed to annually certify that operation procedures are current and accurate, as required by OAC rule 3745-104-26(C).
 - f) Respondent failed to provide EPA auditors with documentation pertaining to employee training on each covered process, and no training had been implemented, as required by OAC rule 3745-104-27.
 - g) Respondent failed to perform inspections and tests on process equipment consistent with the applicable manufacturers' recommendations, good engineering practices and prior operating experience. Respondent also failed to establish and implement written procedures to maintain the ongoing integrity of process equipment and train for process maintenance activities, as required by OAC rule 3745-104-28.

- h) Respondent failed to conduct a compliance audit, as required by OAC rule 3745-104-31.
 - i) Respondent failed to consult with employees and their representatives on the development and implementation of the process hazard analysis and other safety management practices, as required by OAC rule 3745-104-33.
 - j) Respondent failed to create a contractor safety and evaluation program as required by OAC rule 37845-104-35.
4. A deficiency letter was sent on January 29, 2003, requesting the completed and corrected documentation within ninety days of receipt of the letter. The facility official did not respond to the January 29, 2003, deficiency letter. On May 1, 2003 the Ohio EPA sent a warning letter to the Respondent requiring by May 9, 2003, the documentation that would bring the facility into compliance. The Respondent called the Ohio EPA auditor on May 9, 2003, and stated that he had just received the deficiency letter and the warning letter, and that he needed an extension. According to the signed certified letter forms, the January 29, 2003, deficiency letter was received on January 30, 2003, and the warning letter was received on May 8, 2003. The Respondent also requested a meeting at his facility for assistance with the requested documents and corrections relating to the RMP and RMP Program. The Ohio EPA auditor sent a letter to the Respondent on May 12, 2003, granting an extension that required the partial documentation, that he had completed, be submitted to the Ohio EPA by June 12, 2003.
5. On May 21, 2003, the Ohio EPA auditors conducted a meeting with the Respondent to assist with the RMP and RMP Program requirements.
6. On June 6, 2003, the Ohio EPA auditor sent a letter requesting the required documentation be submitted by July 6, 2003.
7. The Ohio EPA received documentation from the Respondent dated July 3, 2003, but it was not accurate and complete. Deficiencies 3.d,f,g,h,i and j, continue to exist.
8. 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. Respondent shall submit and implement an acceptable RMP Program within thirty days from the effective date of these Orders. The Program must be in compliance with the requirements of OAC Chapter 3745-104 as applicable to the Respondent's facility.
2. Pursuant to ORC 3753.09, Respondent is assessed a civil penalty in the amount of ten thousand, three hundred dollars (\$10,300) 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 ten thousand, three hundred (\$10,300) 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 \$10,300. 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.

A copy of this check shall be sent to:

Jim Orlemann
Manager, Engineering Section
Ohio Environmental Protection Agency
Division of Air Pollution Control
Lazarus Government Center
P.O. Box 1049
Columbus, Ohio 43216-1049

VI. TERMINATION

Respondent's obligations under these Orders shall terminate when Respondent certifies in writing and demonstrates to the satisfaction of the 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 "city 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 Respondent.

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 the 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 43216-0149
Attention: Kimberly Joseph, DAPC, RMP

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 this Orders.

XII. WAIVER

In order to resolve disputed claims, without admission of fact, violation or liability, and in lieu of further enforcement action taken 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 services 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 appeal and intervention unless these Orders are stay 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

Christopher Jones
Director

Date

IT IS AGREED:

The City of Zanesville

Signature

Date

Printed or Typed Name

Title