

BEFORE THE OHIO  
ENVIRONMENTAL PROTECTION AGENCY  
OHIO E.P.A.  
APR 28 2005  
ENTERED DIRECTOR'S JOURNAL

In the Matter of:

Interstate Warehousing  
110 Distribution Drive  
Hamilton, Ohio 45014

Directors Final Findings  
and Orders

PREAMBLE

It is agreed by the parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to Interstate Warehousing ("Respondent"), pursuant to the authority vested in the Director of the Ohio Environmental Protection Agency ("Ohio EPA") under Ohio Revised Code ("ORC") §§3753.08 and 3745.01.

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 owned by the Respondent shall in any way alter Respondent's obligations under these Orders.

III. DEFINITIONS

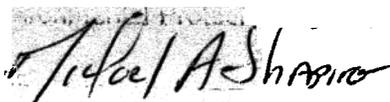
Unless otherwise stated, all terms used in these Orders shall have the same meaning as defined in ORC Chapter 3753 and the rules promulgated thereunder.

IV. FINDINGS

The Director of the Ohio EPA has determined the following findings:

Respondent is a refrigeration warehouse facility located at 110 Distribution Drive in Hamilton, Ohio. Anhydrous ammonia is used in the process as refrigeration. Anhydrous ammonia is a regulated substance listed in Ohio Administrative Code ("OAC") Rule 3745-104-04 and has a threshold of 10,000 pounds. The quantity of anhydrous ammonia reported by Respondent in the Risk Management Plan ("RMP") submitted to Ohio EPA on July 13, 2004, is 12,100 pounds.

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 OAC Rule 3745-104-02, shall comply with the requirements of this rule by submitting a Risk Management Plan ("RMP") and implementing a prevention program no later than June 21, 1999. A beginning date of



4/28/05

January 3, 2000 is used in calculating the penalty because that is the date when Ohio EPA, DAPC received delegation for the program.

3. Respondent submitted an RMP to U.S. EPA on February 24, 2004 and to Ohio EPA, Division of Air Pollution Control ("DAPC") on July 13, 2004.
4. Ohio EPA, DAPC sent a warning letter to Respondent on June 25, 2004 requesting a copy of the RMP that was sent to U.S. EPA in February 2004 and documentation as to when the process was first over the 10,000 pound threshold to determine the date that the RMP should have been submitted. The RMP was received by DAPC on July 13, 2004 along with calculations by AC&R Specialists dated December 2, 2003 that determined 12,100 pounds of anhydrous ammonia is in the refrigeration process.
5. On July 14, 2004, a phone call with Carrie Heston from the corporate office of Respondent determined that there has been no expansion in the process or additions of anhydrous ammonia. A telefax was received on July 21, 2004 providing previous calculations that determined that the amount in the process was 9,344 pounds. The calculations were not dated. According to Ms. Heston, these calculations were also conducted by AC&R Specialists.
6. On July 28, 2004, a second warning letter was sent to Respondent requesting information as to when the amount of ammonia increased from 9,344 to 12,100 pounds. An e-mail from Carrie Heston indicated that the amount has not changed, but that the calculations were based on a maximum amount of ammonia that could be in the process. The information submitted with the 12,100 pound amount clearly states that the estimation is based on "the minimum liquid level required for proper operation."
7. Correspondence to Ms. Heston on September 29, 2004 from Ohio EPA, DAPC provided seven days for Respondent to submit documentation explaining the differences in the calculations. On October 18, 2004, an e-mail was received from Respondent indicating that it believes it is under the 10,000 pound threshold. No explanation for the differences in the calculations was received.
8. On February 18, 2005, a meeting was held with The Tippmann Group and Ohio EPA, DAPC. At this time, additional calculations were provided with an ammonia amount of 8,900 pounds.
9. On March 9, 2005, an RMP audit was conducted at the facility. During the audit, it was indicated that the RMP would be corrected and resubmitted as "predictive filing." No documentation could be provided that the process had less than 10,000 pounds beginning in February 2004. At the time of the inspection, the Respondent was out of compliance with the following rules from February 2004 through April 2005 (RMP to be corrected as a predictive filing):

- a. Respondent failed to have complete supporting documentation for the hazard assessment, as required by OAC rule 3745-104-15.
  - b. Respondent failed to have a management system for a Program Level 3 process, as required by OAC rule 3745-104-07.
  - c. Respondent failed to maintain records for testing and inspections, as required by OAC rule 3745-104-28.
  - d. Respondent failed to follow the written contractor safety program, as required by OAC rule 3745-104-35.
10. 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 correct and resubmit the RMP as a predictive filing no later than April 15, 2005. If at any time the process exceeds the amount of 10,000 pounds for anhydrous ammonia, the RMP will be corrected and resubmitted and a compliant RMP program administered no later than the date that the process is above the threshold.
2. Within fourteen (14) days after the effective date of these Orders, Respondent shall pay Ohio EPA the amount of twelve thousand four hundred eighty dollars (\$12,480) in settlement of Ohio EPA's claims for civil penalties, which may be assessed pursuant to ORC § 3753.09 and 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 twelve thousand four hundred eighty dollars (\$12,480). 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 the check shall be sent to:

Jim Orlemann  
Assistant Chief, Compliance and Enforcement  
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 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.

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 Respondent. For purposes of these Orders, a responsible official is the person authorized to sign in OAC Rule 3745-35-02(B)(1) for a corporation or a duly authorized representative of Respondent as that term is defined in the above-referenced rule.

#### **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 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:

Ohio Environmental Protection Agency  
Division of Air Pollution Control  
P.O. Box 1049  
Columbus, Ohio 43216-1049  
Attention: Sherri Swihart

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**

  
\_\_\_\_\_  
Joseph P. Koncelik  
Director

4-21-05  
Date

**IT IS SO AGREED:**

**Interstate Warehousing**

  
\_\_\_\_\_  
Signature

4-11-05  
Date

Jekb Hastings  
Printed or Typed Name

\_\_\_\_\_  
Date

CF0  
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