

**BEFORE THE OHIO
ENVIRONMENTAL PROTECTION AGENCY**

OHIO E.P.A.
OCT -5 2007

In the Matter of:

ENTERED DIRECTOR'S JOURNAL

Dole Fresh Vegetables, Inc.
600 Benjamin Drive
Springfield, Ohio 45502

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:
:

Director's 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: [Signature] Date: 10-5-07

These Director's Final Findings and Orders ("Orders") are issued to Dole Fresh Vegetables, Inc. ("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 Respondent or 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 makes the following findings:

1. Respondent is a food preparation and storage facility located at 600 Benjamin Drive in Springfield, Ohio. Anhydrous ammonia is used in the refrigeration process. The quantity of anhydrous ammonia at the facility is approximately 30,000 pounds. Respondent treats process water using chlorine. The quantity of chlorine at the facility is approximately 6,000 pounds.
2. Both anhydrous ammonia and chlorine are regulated substances listed in Ohio Administrative Code ("OAC") Rule 3745-104-04. 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 OAC 3745-104-06 through 49, where applicable, by submitting a Risk Management Plan ("RMP") and implementing a prevention program no later than June 21, 1999. On January 3, 2000, Ohio EPA, DAPC received delegation for the RMP program from U.S. EPA.

3. Anhydrous ammonia has a threshold of 10,000 pounds and chlorine a threshold of 2,500 pounds. Respondent stored anhydrous ammonia and chlorine in amounts that exceeded the thresholds established in OAC 3745-104-04, and as a result, Respondent is subject to the RMP requirements detailed in OAC 3745-104-06.
4. On September 14, 2006, an RMP audit was conducted at the facility by Ohio EPA, DAPC. Ten deficiencies were discovered during the inspection. These ten deficiencies are:
 - a. Respondent failed to establish a written management system for RMP elements, as required by OAC Rule 3745-104-07.
 - b. Respondent failed to provide supporting hazard assessment documentation, in violation of OAC Rule 3745-104-15.
 - c. Respondent failed to develop process safety information, in violation of OAC Rule 3745-104-24.
 - d. Respondent failed to conduct a process hazard analysis for the chlorination process and address recommendations from the anhydrous ammonia refrigeration process hazard analysis, in violation of OAC Rule 3745-104-25.
 - e. Respondent failed to include operating limits, consequences of deviations, and safety functions for the ammonia process and complete operating procedures for the chlorination process, in violation of OAC Rule 3745-104-26.
 - f. Respondent failed to provide refresher training to employees at least every three years, in violation of OAC Rule 3745-104-27.
 - g. Respondent failed to implement preventive maintenance procedures, in violation of OAC Rule 3745-104-28.
 - h. Respondent failed to complete pre-startup reviews, in violation of OAC Rule 3745-104-30.
 - i. Respondent failed to conduct an RMP compliance audit at least every three years, in violation of OAC Rule 3745-104-31.

- j. Respondent failed to implement the contractor program, in violation of OAC Rule 3745-104-35.
5. Ohio EPA, DAPC sent a deficiency letter on September 27, 2006 specifying thirty days to achieve compliance. Guidance to assist the facility in complying was enclosed for some of the deficiencies.
6. On November 14, 2006, a phone call was received from Respondent indicating that the deficiencies were being addressed.
7. On December 7, 2006, Dole submitted an RMP audit report findings and target completion dates Ohio EPA. The report outlines deficiencies and dates when the deficiencies are to be corrected.
8. No documentation was submitted to Ohio EPA to resolve deficiencies, as required by OAC Rule 3745-104-50, including those that appeared to be corrected from the Dole RMP audit report. A warning letter was sent on January 29, 2007 providing seven days for Respondent to submit the information requested in the deficiency letter.
9. As of April 24, 2007, no documentation has been submitted to resolve the deficiencies from the September 14, 2006 audit. As a result, the ten deficiencies remain.
10. On July 12, 2007, a meeting was held with Respondent and Ohio EPA RMP auditors. Documentation was provided for the deficiencies outlined in paragraph 4. After reviewing the information, deficiencies from paragraphs 4(a), (b), (d), and (i) have been resolved for both the chlorine and ammonia processes. The requirements for paragraphs 4(g) and (j) have been resolved for the ammonia process and paragraph 4(e) for the chlorine process. Paragraphs 4(c), (f) and (h) remain deficiencies for both processes and 4(e) for the ammonia process.
11. On July 24, 2007, documentation was received that the resolved deficiencies for paragraphs 4(g), (h), and (j) for both processes.
12. On August 20, 2007, documentation was received that resolved the remaining deficiencies.
13. 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. Respondent shall continue to implement the compliant RMP program.
2. Pursuant to ORC § 3753.09, Respondent shall pay the amount of fifty-four thousand four hundred fifty dollars (\$54,450) in settlement of Ohio EPA's claim for civil penalties. Within fourteen (14) days after the effective date of these Orders, payment to Ohio EPA shall be made by an official check made payable to "Treasurer, State of Ohio" for forty-three thousand five hundred sixty dollars (\$43,560) of the total amount which will be deposited into the Risk Management Plan fund established pursuant to ORC § 3753.05. The official check shall be submitted to Brenda Case, or her successor, together with a letter identifying the Respondent, to:

Ohio EPA
Office of Fiscal Administration
P.O. Box 1049
Columbus, Ohio 43216-1049

In lieu of paying the remaining ten thousand eight hundred ninety dollars (\$10,890) of the civil penalty, Respondent shall fund a Supplemental Environmental Project ("SEP") by making a contribution in the amount of \$10,890 to the Ohio EPA's Clean Diesel School Bus Fund (Fund 5CD). Respondent shall tender an official check made payable to "Treasurer, State of Ohio" for \$10,890. The official check shall be submitted to Brenda Case, or her successor, together with a letter identifying Respondent, the facility, and fund 5CD to:

Ohio EPA
Office of Fiscal Administration
Lazarus Government Center
50 West Town Street, Suite 700
Columbus, Ohio 43216-1049

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 EPA
Division of Air Pollution Control
Lazarus Government Center
50 West Town Street, Suite 700
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



Chris Korleski
Director

10/2/07
Date

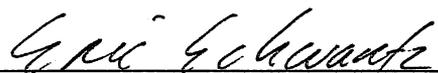
IT IS SO AGREED:

Dole Fresh Vegetables, Inc.



Signature

9-10-07
Date



Printed or Typed Name

9-10-07
Date



Title