OHIO E.P.A.

DEC - 4 2007

ENTERED DIRECTOR'S JOURNAL

**BEFORE THE**

**OHIO ENVIRONMENTAL PROTECTION AGENCY**

**In the Matter of:**

| | | |
|---|---|---|
| **Koch Foods** | ) | **Director's Final Findings** |
| **4100 Port Union Rd.** | ) | **and Orders** |
| **Fairfield, Ohio 45014** | ) | |

## PREAMBLE

It is agreed by the parties hereto as follows:

## I. JURISDICTION

These Director's Findings and Orders ("Orders") are issued to Koch Foods ("Respondent") pursuant to the authority vested in the Director of the Ohio Environmental Protection Agency ("Ohio EPA") under Ohio Revised Code ("ORC") § 3745.01 and 3751.09.

## 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 identified) 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 3751 and the rules promulgated thereunder.

**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.**

**By:** _____ **Date:** 12-4-07

## IV. FINDINGS

The Director of Ohio EPA has determined the following findings:

1. Respondent processes various meat food products at its facility located at 4100 Port Union Rd. in Fairfield, Ohio.

2. Pursuant to Ohio Administrative Code ("OAC") Rules 3745-100-06 and 3745-100-07, the owner or operator of a facility that is classified within certain Standard Industrial Classification ("SIC") codes, has 10 or more full-time employees, and manufactures, processes, and/or otherwise uses a toxic chemical listed in OAC Rule 3745-100-10 in excess of the applicable annual threshold, must file a toxic release inventory ("TRI") report with Ohio EPA and U.S. EPA on or before July 1 of the following year.

3. Respondent's facility is classified within one of the applicable Standard Industrial Classification codes, reporting as SIC 2013 (sausages and other prepared meat products).

4. Respondent reported employment of 300 and 524 employees in 2004 and 2005, respectively, at the Fairfield facility.

5. Ammonia (CAS 7664-41-7), certain glycol ethers (EPA category N230), and nitric acid (CAS 7697-37-2) are listed toxic chemicals in OAC Rule 3745-100-10.

6. Respondent reported the otherwise use of 22,929 pounds of ammonia in calendar year 2004 and 10,801 pounds of certain glycol ethers and 11,466 pounds of nitric acid in calendar year 2005.

7. On May 2, 2007, Ohio EPA inspected the Respondent's facility and reviewed compliance with TRI record-keeping and reporting requirements.

8. Information provided by Respondent at and subsequent to the inspection demonstrated that Respondent had violated the toxic chemical reporting requirements contained in OAC Rule 3745-100-07 and O.R.C. § 3751.07.

9. Respondent failed to submit TRI reports for calendar years 2004 and 2005 to Ohio EPA on or before the following July 1, in violation of OAC Rule 3745-100-07 and ORC § 3751.07. Respondent also failed to pay the filing fees as required by OAC Rule 3745-100-12, in violation of that rule and ORC§ 3751.07.

10. Respondent failed to submit TRI reports for calendar years 2004 and 2005 to U.S. EPA on or before the following July 1, in violation of OAC Rules 3745-100-6, 3745-100-07, and 3745-100-12, and ORC § 3751.07.

11. The required reports and fees were submitted to Ohio EPA and U.S.EPA by Respondent on June 7 and 28, 2007.

12. 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 their relation to 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 pay the amount of ten thousand dollars ($10,000) in settlement of Ohio EPA's claims for civil penalties, which may be assessed pursuant to ORC § 3751.10. 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 eight thousand dollars ($8,000). The official check shall be submitted to Brenda Case, or her successor, together with a letter identifying Respondent, to:

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

2. In lieu of paying the remaining two thousand dollars ($2,000) of civil penalty, Respondent shall fund a Supplemental Environmental Project ("SEP") by making a contribution in the amount of $2,000 to the Ohio EPA's Clean Diesel School Bus Fund (Fund 5CD0). Respondent shall make payment on or within thirty (30) days after the effective date of these Orders by tendering an official check made payable to "Treasurer, State of Ohio" for $2,000. The official check shall be submitted to Brenda Case, or her successor, together with a letter identifying the Respondent and fund 5CD0, to the above-stated address.

3. 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
P.O. Box 1049
Columbus, Ohio 43216-1049

4. Should Respondent fail to fund the SEP within the required time frame set forth in Order 2, Respondent shall immediately pay to Ohio EPA $2,000 of the civil penalty in accordance with the procedures in Order 1.

## VI. TERMINATION

Respondent's obligations under these Orders shall terminate upon Ohio EPA's receipt of the official checks required by Section V of these Orders.

## 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 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
Lazarus Government Center
Division of Air Pollution Control
50 West Town Street, P.O. Box 1049
Columbus, Ohio 43216-1049
Attn: James A. Orlemann

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

Date 11/30/07

**IT IS SO AGREED:**

**Koch Foods**

Signature

Date 11/20/07

BRIAN A. REISER
Printed or Typed Name

GM - FUNTHER PROCESSED
Title