

BEFORE THE OHIO
ENVIRONMENTAL PROTECTION AGENCY

OHIO E.P.A.

JUN 20 2012

ENTERED DIRECTOR'S JOURNAL

In the Matter of:

Na-Churs Plant Food Company
21 Leader Street
Marion, Ohio 43302

Director's 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 Na-Churs Plant Food Company ("Respondent") pursuant to the authority vested in the Director of the Ohio Environmental Protection Agency ("Ohio EPA") under Ohio Revised Code ("ORC") § 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 Respondent or of the facility (as hereinafter defined) 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 Ohio EPA makes the following findings:

1. Respondent operates a facility at 421 Leader Street in Marion, Ohio that produces plant food for commercial use. The plant food is produced by mixing several chemicals in a reactor, including 29.9 percent liquid ammonia, which is located in two storage tanks for a total of 43,000 pounds. The process also

includes associated piping, valves, and pumps, for a total capacity of 86,000 pounds. The process for which this regulated substance is employed is a "covered process" within the meaning of OAC Rule 3745-104-01 and has over the threshold amount (10,000 pounds) of liquid ammonia at a concentration greater than 20%. The "covered process" at the Respondent's facility is subject to Prevention Program 2.

2. Pursuant to OAC Rule 3745-104-02, an owner or operator of a stationary source, which has more than a threshold quantity of a regulated substance in a process, shall comply with the requirements of this rule by submitting a Risk Management Plan ("RMP") to Ohio EPA no later than June 21, 1999. Respondent submitted RMPs to Ohio EPA every five years according to OAC Rule 3745-104-49(B)(1) that requires the RMPs to be updated every five years.
3. On January 15, 2003, an inspector with the Ohio EPA, Division of Air Pollution Control ("DAPC") conducted the initial five-year inspection at Respondent's facility, and discovered seven rule violations. No penalty was assessed, but the Respondent was required to correct the violations and remain in compliance. All of the violations were corrected and the facility was in compliance at that time.
4. On March 16, 2011, Ohio EPA conducted a second five-year inspection at Respondent's facility and discovered three violations of the rules, which included two violations that were cited from the first inspection. The violations are as follows:
 - (a) Respondent failed to provide training to the employees at least every three years, in violation of OAC Rule 3745-104-20.
 - (b) Respondent failed to create and implement a maintenance program, in violation of OAC Rule 3745-101-21. This is a repeat violation from the 2003 inspection.
 - (c) Respondent failed to conduct a compliance audit at least every three years according to OAC Rule 3745-104-22. This is a repeat violation from the 2003 inspection.
5. A letter dated March 25, 2011, was sent to Respondent, requiring deficiencies 4(a), (b), and (c), above, to be corrected within thirty days of receipt of the letter. After thirty days there was no response.
6. A warning letter dated June 15, 2011, was sent to Respondent requiring the deficiencies to be corrected by the submission of documentation within fifteen days of receipt of the letter or enforcement action would be pursued.

7. Respondent submitted a letter dated June 23, 2011, and stated that the facility does not have the requested documentation.
8. On May 8, 2012, Respondent submitted all of the documentation to bring the facility into compliance.
9. ORC § 3753.06 prohibits violations of the provisions of ORC Chapter 3753 or any rule adopted under it. Respondent violated rules adopted under ORC Chapter 3753, specifically, the rules cited in Findings 4(b) from 2004 (the year after the first inspection), to May 8, 2012, and Findings 4(a) and (c) were violated from September 2006 to September 2009.
10. 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. Pursuant to ORC § 3753.09, Respondent is assessed a civil penalty in the amount of six thousand one hundred and eight dollars (\$6,108) in settlement of Ohio EPA's claim for civil penalties. Within thirty (30) days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of six thousand one hundred and eight dollars (\$6,108) 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 \$6,108. The official check shall be submitted to Ohio EPA, Office of Fiscal Administration, attention Akia Smith, 50 West Town Street, P.O. Box 1049, Columbus, Ohio 43216-1049, together with a letter identifying the Respondent and the facility.
2. The official check shall be submitted to Akia Smith, together with a letter identifying the Respondent, the facility, and Fund 5CD0, to the above-stated address.
3. A copy of the above check shall be sent to Bruce Weinburg, Environmental Manager, Enforcement Section, or his successor at the following address:

Ohio EPA
Division of Air Pollution Control
50 West Town St., Suite 700
P. O. Box 1049
Columbus, Ohio 43216

VI. TERMINATION

Respondent's obligations under these orders shall terminate upon Ohio EPA's receipt of the official check 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 the Respondent's facility.

VIII. OTHER APPLICABLE LAWS

All actions 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 statute or regulation 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:

Kimberly Joseph
Ohio Environmental Protection Agency
Division of Air Pollution Control
50 West Town St., Suite 700
P.O. Box 1049
Columbus, Ohio 43216-1049

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

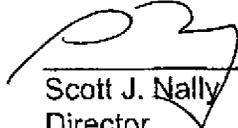
The effective date of these Orders is the date these Orders are entered into the Ohio EPA Director's journal.

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.

ORDERED AND AGREED:

Ohio Environmental Protection Agency

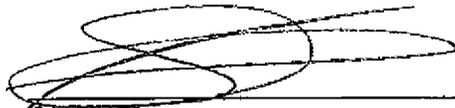


Scott J. Nally
Director

6/15/12
Date

AGREED:

Na-Churs Plant Food Company



Signature

May 31 / 12
Date

Neil Dolson
Printed or Typed Name

President & CEO
Title

Compliance and Enforcement Plan

Division of Air Pollution Control

Last updated: June 5, 2012

Company Name: Na-Churs Plant Food Company

Address: 421 Leader Street, Marion, OH

County: Marion

Facility I.D. Number: N/A

DAPC Central Office contact: Tom Kalman

Telephone: (614)644-3598 e-mail: tom.kalman@epa.state.oh.us

Legal Office Contact: Stephen Feldmann

Telephone: 614-644-3037 e-mail: stephen.feldmann@epa.state.oh.us

- A. Description of the most recent violation, or series of violations:** The violations are as follows: Respondent failed to provide training to the employees at least every three years, Respondent failed to create and implement a complete maintenance program, and Respondent failed to conduct a compliance audit at least every three years. These failures were violations of OAC Chapter 3745-104 and ORC § 3753.06.
- B. Regulated entity's compliance history:** On January 15, 2003, an inspector with the Ohio EPA, Division of Air Pollution Control ("DAPC") conducted the initial five-year inspection at Respondent's facility, and discovered seven rule violations. All of the violations were corrected and the facility was in compliance at that time. No penalty was assessed, but the Respondent was required to correct the violations and remain in compliance. On March 16, 2011, Ohio EPA conducted a second five-year inspection at Respondent's facility and discovered three violations of the rules, which included two violations that were cited from the first inspection.
- C. Enforcement tools utilized:** Direct contact with the company and inspections, in addition to the recommended proposed Director's Final Findings and Orders ("DFFOs"). A deficiency (Notice of Violation ("NOV")) letter was sent after the first inspection in 2003. A deficiency (NOV) letter dated March 25, 2011, was sent after the second five-year inspection; and due to no response, a warning

letter was sent on June 15, 2011. The deficiencies (violations) identified in the March 25, 2011 letter are as follows:

OAC Rule 3745-104-20, failure to provide training to the employees every three years;

OAC Rule 3745-104-21, failure to create and implement a maintenance program;

OAC Rule 3745-104-22, failure to conduct a compliance audit at least every three years.

- D. Assessment of the cooperativeness of the regulated entity:**
The maintenance violation has been resolved, but due to timeliness, the other two could not be resolved. They will be implemented in the program.
- E. Environmental harm resulting from the regulated entity's noncompliance:**
The goal of the RMP program is to prevent releases of regulated substances. The facility's worst case release scenario includes 2,334 potentially affected residents, as well as schools, hospitals, and major commercial and industrial areas.
- F. Abatement options required to resolve the noncompliance:** Perform corrective actions. This includes thickness testing on the storage tanks and conducting an annual inspection checklist on the storage tanks.
- G. Additional monitoring and/or testing required to demonstrate compliance:**
Thickness testing and an annual inspection checklist was submitted.
- H. Recommended enforcement action to be taken:**
The proposed DFFOs were sent out on April 18, 2012, for a settlement amount of \$6,108. Ohio EPA received a response from Na-Churs Alpine on April 23, 2012, stating that they will submit the penalty payment of \$6,108 once the DFFOs are signed by the Director.
- I. Monitoring and/or testing required by enforcement action:**
Documentation has been submitted to verify thickness testing was conducted.
- J. Technical assistance to be provided:** Further assistance will be provided; however, guidance was provided to the company with the deficiency (NOV) letters.