

**BEFORE THE OHIO
ENVIRONMENTAL PROTECTION AGENCY**

OHIO E.P.A.

NOV 21 2012

ENTERED DIRECTOR'S JOURNAL

In the Matter of:

Gerber Poultry, Inc.
5889 Kidron Road
Kidron, Ohio 44636

: 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 Gerber Poultry, 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 (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 the Ohio EPA makes the following findings:

1. Respondent operates a chicken slaughtering and processing facility in Kidron that houses an ammonia refrigeration process to chill the carcasses and finished product. The facility's refrigeration process uses a "regulated substance," namely anhydrous ammonia, as that term is defined in Ohio Administrative Code ("OAC") Rule 3745-104-01.
2. Anhydrous ammonia is a regulated substance listed in 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 Rules 3745-104-06

through 49, where applicable, by submitting a Risk Management Plan ("RMP") and implementing an accidental release prevention program no later than June 21, 1999 or no later than when the threshold limit is exceeded in a process. On January 3, 2000, Ohio EPA, DAPC received delegation for the RMP program from U.S. EPA. Respondent submitted the initial RMP in June 1999 and has resubmitted every five years thereafter.

3. Anhydrous ammonia has a RMP threshold of 10,000 pounds. Respondent stores 14,100 pounds of anhydrous ammonia.
4. An initial RMP audit was conducted by Ohio EPA on October 25, 2005. The following five violations were discovered during the audit:
 - (a) Respondent failed to annually certify that operating procedures are current and accurate, in violation of OAC Rule 3745-104-26.
 - (b) Respondent failed to conduct refresher training on the operating procedures, in violation of OAC Rule 3745-104-27.
 - (c) Respondent failed to establish and implement a written mechanical integrity program that follows recognized and generally acceptable good engineering practices for inspection and testing procedures, in violation of OAC Rule 3745-104-28.
 - (d) Respondent failed to establish and implement written procedures to manage changes to the process, in violation of OAC Rule 3745-104-29.
 - (e) Respondent failed to conduct an RMP compliance audit at least every three years, in violation of OAC Rule 3745-104-31.
5. Respondent submitted documentation in order to resolve the above-noted violations and a completion letter for these violations was sent on March 30, 2006 requiring Respondent to maintain compliance with the RMP regulations. No penalty was assessed for the violations discovered in 2005.
6. On March 6, 2012, Ohio EPA conducted the second five-year RMP audit at Respondent's facility and discovered seven violations of the applicable rules. The violations were as follows:
 - (a) Respondent failed to maintain documentation for the worst case and alternative release scenarios, in violation of OAC Rule 3745-104-15.
 - (b) Respondent failed to conduct a complete process hazard analysis (PHA) at least every five years, in violation of OAC Rule 3745-104-25.
 - (c) Respondent failed to annually certify that operating procedures were reviewed and accurate, in violation of OAC Rule 3745-104-26. This is a repeat violation.
 - (d) Respondent failed to provide three-year refresher training on operating procedures, in violation of OAC Rule 3745-104-27. This is a repeat violation.
 - (e) Respondent failed to follow recognized and generally acceptable good engineering practices for inspection and testing procedures and to correct

- deficiencies discovered in equipment from inspections and tests, in violation of OAC Rule 3745-104-28. This is a repeat violation.
- (f) Respondent failed to update the process safety information after changes were made to the process, in violation of OAC Rule 3745-104-29. This is a repeat violation.
 - (g) Respondent failed to conduct an RMP compliance audit at least every three years, in violation of OAC Rule 3745-104-31. This is a repeat violation.
7. A deficiency letter outlining the seven violations was mailed to Respondent on March 19, 2012.
 8. Respondent submitted a compliance schedule on April 18, 2012 to resolve the violations identified in Findings 6(a), 6(d), 6(e), and 6(f) by September 1, 2012.
 9. Respondent submitted information which resolved the violations identified in Findings 6(b) and 6(c). Facility initiated RMP compliance audits were conducted in January of 2006 and 2010; therefore, the next compliance audit is not required until January of 2013.
 10. Respondent submitted documentation on August 27, 2012 that resolved Findings 6(a), 6(d), 6(e), and 6(f).
 11. 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 Finding 6, in violation of ORC § 3753.06.
 12. The Director has given consideration to, and based his determination on, evidence related 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 a compliant RMP program.
2. Pursuant to ORC § 3753.09, Respondent shall pay the amount of eighty-four hundred dollars (\$8,400) in settlement of Ohio EPA's claim for civil penalties. Within thirty (30) 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 eighty-four hundred dollars (\$8,400) 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 Akia Smith, or her successor, together with a letter identifying the Respondent, to:

Ohio EPA
Division of Air Pollution Control
Lazarus Government Center
50 West Town Street, Suite 700
Columbus, Ohio 43215

3. A copy of each of the above check shall be sent to Bruce Weinberg, Manager, Enforcement Section, 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 43215

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 a "facility 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, 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

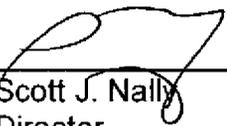
The effective date of these Orders is the date these Orders are entered into the Ohio EPA Director's journal.

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.

ORDERED AND AGREED:

Ohio Environmental Protection Agency



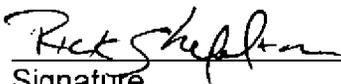
Scott J. Nally
Director

11/19/12

Date

AGREED:

Gerber Poultry, Inc.



Signature

11-7-12

Date

Rick Shefelton

Printed or Typed Name

Safety Director

Title