

OHIO E.P.A.

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BEFORE THE OHIO

ENVIRONMENTAL PROTECTION AGENCY

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OHIO EPA  
DIVISION FISCAL SECTION

In the Matter of:

Sofa Foods, Inc.  
253 Waggoner Blvd.  
Toledo, Ohio 43642

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:

Director's Final Findings  
and Orders

**PREAMBLE**

It is agreed by the parties hereto as follows:

**1. JURISDICTION**

These Director's Final Findings and Orders ("Orders") are issued to Sofa Foods, Inc. 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 wholesale distribution business that is a refrigeration company and consists of groceries, packaged frozen food, dairy products and meat products. The facility is located at 253 Waggoner Blvd. in Toledo, Ohio and anhydrous ammonia is used as the refrigerant to cool or freeze the

products. Anhydrous ammonia is a regulated chemical listed in Administrative Code ("OAC") 3745-104-04 and has a threshold amount of 10,000 pounds. The amount stored in the vessels and piping on site at this facility is 15,000 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 anhydrous ammonia.

2. Pursuant to OAC Rule 3745-104-05, an owner or operator of a stationary source is required to submit a Risk Management Plan ("RMP"), on the date which a regulated substance is first present at a facility above the threshold quantity in a process. Respondent was required to submit an RMP in December, 2001, when the ammonia was brought on site, but did not submit an RMP until January, 2004. Also, according to OAC Rule 3745-104-49, the facility RMP is required to be updated every five years which was January, 2009. The RMP was not resubmitted until June, 21, 2012, after a letter was sent to Respondent on January 11, 2012, from the Ohio EPA notifying them that they were late, and after an RMP inspection was conducted on February 15, 2012.
3. On February 15, 2012, an inspector with the Ohio EPA, Division of Air Pollution Control ("DAPC") conducted the initial five-year inspection at Respondent's facility, and discovered that there was no RMP Program being implemented, in violation of OAC 3745-104-06. A deficiency letter was sent on February 24, 2012, requiring the facility to create and begin implementing an RMP Program, to re-submit the RMP, and to submit documentation to verify an RMP Program was being implemented, to the Ohio EPA within thirty days of receipt of the letter.
4. On March 9, 2012, an anhydrous ammonia refrigeration consultant called and requested an extension of ninety days. He was contacted by Respondent to bring the facility into compliance. The Ohio EPA, RMP inspector granted the ninety day extension.
5. On May 30, 2012, Respondent submitted all of the required documentation except the operating procedures for charging the ammonia system, in violation of OAC Rule 3745-104-26, and a schedule to address and complete the action items derived from the process hazard analysis, mechanical integrity inspections, and the compliance audit, in violation of OAC Rule 3745-104-25, OAC Rule 3745-104-28, and OAC Rule 3745-104-31, respectively.
6. On June 7, 2012, the Ohio EPA RMP inspector e-mailed Respondent requesting the above documentation.
7. On June 14, 2012, Respondent submitted a schedule for the action items; however, they are not all completed, in violation of OAC Rule 3745-104-25, OAC Rule 3745-104-28, and OAC Rule 3745-104-31.

8. On June 21, 2012, the U.S. EPA received the updated RMP that was due in January 2009.
9. 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.

#### **1V. ORDERS**

The Director hereby issues the following Orders:

1. Within one hundred twenty (120) days after the effective date of these Orders, Respondent shall perform corrective actions for Finding 7, of these Orders by completing the 2012 compliance audit findings, 2012 process hazard analysis recommendations, and the 2012 mechanical integrity audit results.
2. Pursuant to ORC § 3753.09, Respondent is assessed a civil penalty in the amount of ten thousand dollars (\$10,000) in settlement of Ohio EPA's claim for civil penalties. Within thirty (30) days after the effective date of these Orders, Respondent shall pay \$10,000 in settlement of Ohio EPA's claim 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 \$10,000. 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 the letter identifying the Respondent and the facility.
3. A copy of each of the above check shall be sent to Bruce Weinberg, Enforcement Manager, 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

#### **1VI. 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.

This 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 corporate officer 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 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 applicable 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:**

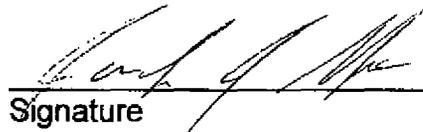
**Ohio Environmental Protection Agency**

  
\_\_\_\_\_  
Scott J. Nally  
Director

12/15/12  
\_\_\_\_\_  
Date

**AGREED:**

Sofa Foods, Inc.

  
\_\_\_\_\_  
Signature

11-14-12  
\_\_\_\_\_  
Date

Joe Sofo  
\_\_\_\_\_  
Printed or Typed Name

President  
\_\_\_\_\_  
Title