

OHIO E.P.A.

BEFORE THE OHIO

AUG 29 2013

ENTERED DIRECTOR'S JOURNAL **ENVIRONMENTAL PROTECTION AGENCY**

In the Matter of:

BEF Foods, Inc.	:	<u>Director's Final Findings</u>
640 Birch Road	:	<u>and Orders</u>
Xenia, Ohio 45385	:	

### PREAMBLE

It is agreed by the parties hereto as follows:

#### I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to BEF Foods, 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 pig slaughtering and processing facility in Xenia that houses an ammonia refrigeration system to chill the carcasses and finished products. The facility's refrigeration system uses a "regulated substance," as defined in Ohio Administrative Code ("OAC") Rule 3745-104-01 and as listed in OAC Rule 3745-104-04; specifically anhydrous ammonia. Anhydrous ammonia has a threshold quantity of 10,000 pounds. Respondent stores 12,700 pounds of anhydrous ammonia at the facility.
2. Pursuant to OAC Rule 3745-104-05, 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 OAC Rule 3745-104-06 by submitting a Risk Management Plan ("RMP") to the U.S. EPA and implementing an accidental release prevention program no later than June 21, 1999 or no later than when the threshold quantity 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. An initial RMP audit was conducted by Ohio EPA on November 17, 2004. The following nine violations were discovered during the audit:
  - (a) Respondent failed to develop a management system to oversee the implementation of the RMP elements, in violation of OAC Rule 3745-104-07.
  - (b) Respondent failed to maintain documentation on site for the hazard assessment, in violation of OAC Rule 3745-104-15.
  - (c) Respondent failed to include documentation on the safety systems in the process safety information, in violation of OAC Rule 3745-104-24.
  - (d) Respondent failed to establish a system to address recommendations from the process hazard analysis, in violation of OAC Rule 3745-104-25.
  - (e) Respondent failed to document that operating procedures are annually certified, in violation of OAC Rule 3745-104-26.
  - (f) Respondent failed to provide refresher training to employees involved with the process, in violation of OAC Rule 3745-104-27.
  - (g) Respondent failed to document that deficiencies in equipment discovered during inspections have been corrected, in violation of OAC Rule 3745-104-28.
  - (h) Respondent failed to conduct a management of change when modifying the process, in violation of OAC Rule 3745-104-29.
  - (i) Respondent failed to conduct an RMP compliance audit to verify compliance, in violation of OAC Rule 3745-104-31.
4. Respondent submitted documentation in order to resolve the above-noted violations (letter not dated). No penalty was assessed for the violations discovered in 2004.
5. On December 19, 2012, Ohio EPA conducted the second five-year RMP audit at Respondent's facility and discovered eight violations of the applicable rules. The violations were as follows:
  - (a) Respondent failed to address recommendations from the process hazard analysis and to develop a written schedule as to when these actions are to be completed, in violation of OAC Rule 3745-104-25. This is a repeat violation.
  - (b) Respondent failed to annually certify that operating procedures are current and accurate, in violation of OAC Rule 3745-104-26. This is a repeat violation.

- (c) Respondent failed to provide initial training for new employees and three-year refresher training for those employees involved with operating the process, in violation of OAC Rule 3745-104-27. This is a repeat violation.
  - (d) Respondent failed to conduct inspections and tests consistent with applicable manufacturers' recommendations, in violation of OAC Rule 3745-104-28. This is a repeat violation.
  - (e) 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.
  - (f) Respondent failed to establish a system to address and resolve recommendations from incident investigations and to document corrective actions, in violation of OAC Rule 3745-104-32.
  - (g) Respondent failed to coordinate the revised emergency response plan with the Local Emergency Planning Committee, in violation of OAC Rule 3745-104-36.
  - (h) Respondent failed to update the RMP after a change in the emergency contact information within one month, in violation of OAC Rule 3745-104-49.
6. A compliance schedule was emailed to Ohio EPA on January 4, 2013, that stated that all violations would be remedied by March 1, 2013.
7. A notice of violation letter documenting the violations discovered during the December 19, 2012 audit was mailed to Respondent on January 4, 2013 requiring compliance no later than March 30, 2013. The business entity involved in this matter was mistakenly identified in the deficiency letter. Any reference to Bob Evans Farms, Inc. shall be read as "BEF Foods, Inc."
8. Respondent submitted documentation to address the cited violations and has re-achieved compliance with the applicable requirements in OAC Chapter 3745-104.
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 Finding 5, in violation of ORC § 3753.06.
10. 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 Order:

1. Respondent will continue to implement a compliant RMP program.

2. Pursuant to ORC § 3753.09, Respondent shall pay the amount of fifteen thousand two hundred ninety five dollars (\$15,295) 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 fifteen thousand two hundred ninety five dollars (\$15,295) of the total amount, which will be deposited into the Risk Management Plan Fund (Fund 5420) established pursuant to ORC § 3753.05. The official check shall be submitted to Carol Butler, 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 the above check shall be sent to Bruce Weinberg, Manager, Compliance/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 upon Ohio EPA's receipt of the official check, as 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 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**

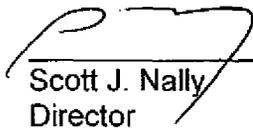
The effective date of these Orders is the date these Orders are entered into the Ohio EPA Director's journal.

**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:**

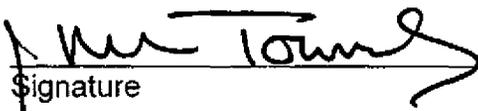
**Ohio Environmental Protection Agency**

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

8/20/13  
\_\_\_\_\_  
Date

**AGREED:**

**BEF Foods, Inc.**

  
\_\_\_\_\_  
Signature

8/15/13  
\_\_\_\_\_  
Date

J. Michael Townsley  
\_\_\_\_\_  
Printed or Typed Name

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