

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

Kerry's Motor World, Inc. : Director's Final Findings
2012 Mahoning Road NE : and Orders
Canton, Ohio 44705 :

PREAMBLE

It is agreed by the parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to Kerry's Motor World, Inc. ("Respondent") pursuant to the authority vested in the Director of the Ohio Environmental Protection Agency ("Ohio EPA") under Ohio Revised Code ("ORC") §§ 3704.03 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 3704 and the regulations promulgated thereunder.

IV. FINDINGS

The Director of Ohio EPA has determined the following findings:

1. Respondent operates a used automobile dealership and an automobile repair and service facility located at 2012 Mahoning Road NE, Canton, Stark County, Ohio. At this facility, Respondent offer used automobiles for sale.

2. OAC Rule 3745-80-01(K) defines "tamper with" as meaning to remove, temporarily or permanently, except for repair, replacement or converting for use of a clean alternative fuel, to bypass, defeat, or render inoperative, in whole or in part, any emission control system that is installed on or in a motor vehicle, for purposes of defeating, bypassing or otherwise circumventing the requirements of the Clean Air Act Amendments and/or ORC Chapter 3704 and the rules promulgated thereunder.

3. OAC Rule 3745-80-02(E) states that no person shall knowingly sell, lease,

rent or offer to sell, lease, or rent or offer to transfer title or a right to possession of a motor vehicle that has been tampered with.

4. ORC § 3704.05(G) states, in part, that no person shall violate any order, rule, or determination of the Director issued, adopted, or made under ORC Chapter 3704.

5. ORC § 3704.16(A)(1), (2), and (3) state that "tamper with" means to remove permanently, bypass, defeat, or render inoperative, in whole or part, any emission control system that is installed on or in a motor vehicle. As used in ORC § 3704.16, "motor vehicle" has the same meaning as in ORC § 4501.01 and "emission control system" means any system designated by the United States Environmental Protection Agency as an emission control system under Title II of the Clean Air Act Amendments.

6. ORC § 3704.16(C)(2) states that no person shall knowingly sell, lease, rent, or offer to sell, lease, or rent, or transfer or offer to transfer title or right to possession of a motor vehicle that has been tampered with.

7. ORC § 3704.99(E) states, in part, that whoever knowingly violates ORC § 3704.16(C)(2) shall be fined not less than five hundred nor more than twenty-five hundred dollars for each day of each violation.

8. The Canton City Health Department, Air Pollution Control Division ("Canton APCD"), is Ohio EPA's contractual representative in Stark County.

9. On September 25, 1996, inspectors from Canton APCD conducted a vehicle emissions anti-tampering inspection at Forrest Motors Wholesale Corp. used automobile sales facility located at 3225 Mahoning Road NE, Canton. Mr. Kerry Fuller, General Manager, represented Forrest Motors Wholesale Corp. during the inspection. The Canton APCD inspectors found that four of the five vehicles inspected were offered for sale in a tampered condition. The tampering observed consisted of exhaust heat riser tubes missing from three of the vehicles and the positive crankcase ventilation system being disconnected on the fourth vehicle (see attached Table I). Mr. Fuller was informed of the inspection results by the Canton APCD inspectors and provided with a copy of the inspection report and copies of ORC § 3704.16, applicable OAC Rules, and Ohio EPA anti-tampering program fact sheets.

10. On September 26, 1996, Canton APCD issued a NOV to Forrest Motors Wholesale Corp. (addressed to Mr. Kerry Fuller) regarding the tampered vehicles identified during the September 25, 1996, inspection. Specifically, Canton APCD cited Forrest Motors Wholesale Corp. with violations of OAC Rule 3745-80-02(E) for knowingly offering tampered motor vehicles for sale. Canton APCD required that Forrest Motors Wholesale Corp. either repair or salvage the identified vehicles within 30 days of receipt of the NOV, and that Forrest Motors Wholesale Corp. supply verification documentation to Canton APCD within 14 days of completion of the repairs or salvage. Forrest Motors Wholesale Corp. did not respond to this NOV.

11. On October 11, 1996, Canton APCD observed that the tampered condition

of each vehicle identified during the September 25, 1996, inspection (per Finding 9 and attached Table I) as having been repaired.

12. On June 19, 2000, inspectors from Canton APCD conducted a vehicle emissions anti-tampering inspection at Forrest Motors Wholesale Corp. used automobile sales facility located at 2012 Mahoning Road NE, Canton. The Canton APCD inspectors examined six vehicles inspected and found none to be in a tampered condition. Forrest Motors Wholesale Corp. was informed of the inspection results by the Canton APCD inspectors and provided with a copy of the inspection report and copies of ORC § 3704.16 and Ohio EPA anti-tampering program fact sheets.

13. On September 24, 2001, Ohio EPA, Division of Air Pollution Control, Mobile Sources Section received a complaint regarding the sale of a tampered motor vehicle from Forrest Motors Wholesale Corp. used automobile sales facility located at 2012 Mahoning Road NE, Canton. Specifically, the complainant stated that on September 14, 2001, he had purchased a 1987 Cadillac Seville not equipped with a required catalytic convertor from Forrest Motors Wholesale Corp.

14. On October 9, 2001, inspectors from Canton APCD conducted a vehicle emissions anti-tampering inspection at Forrest Motors Wholesale Corp. used automobile sales facility located at 2012 Mahoning Road NE, Canton. Mr. Kerry Fuller, General Manager, represented Forrest Motors Wholesale Corp. during the inspection. The Canton APCD inspectors found that four of the eight vehicles inspected were offered for sale in a tampered condition. The tampering observed by the inspectors consisted of exhaust heat riser tubes missing from one of the vehicles, a broken oxygen sensor on another vehicle, and missing fuel filler caps missing from two vehicles. One vehicle inspected was missing the required catalytic convertor, secondary air injection pump, oxygen sensor, and exhaust heat riser tube (see attached Table I). Mr. Fuller was informed of the inspection results by the Canton APCD inspectors and provided with a copy of the inspection report and copies of ORC § 3704.16 and Ohio EPA anti-tampering program fact sheets.

15. On October 18, 2001, Canton APCD issued a warning letter to Forrest Motors Wholesale Corp. (addressed to Mr. Kerry Fuller) regarding the tampered vehicles identified during the October 9, 2001, inspection. Specifically, Canton APCD cited Forrest Motors Wholesale Corp. with violations of OAC Rule 3745-80-02(E) for knowingly offering tampered motor vehicles for sale. Canton APCD required that Forrest Motors Wholesale Corp. either repair or salvage the identified vehicles within 30 days of receipt of the NOV, and that Forrest Motors Wholesale Corp. supply verification documentation to Canton APCD within 14 days of completion of the repairs or salvage. Forrest Motors Wholesale Corp. did not respond to this warning letter.

16. On June 9, 2003, inspectors from Canton APCD conducted a vehicle emissions anti-tampering inspection at Respondent's used automobile sales facility located at 2012 Mahoning Road NE, Canton. Mr. Kerry Fuller, named as an authorized representative and initial director for Respondent in the incorporation documentation filed with the Ohio Secretary of State's Office on November 8, 2002, was not present at the time of the inspection. The Canton APCD inspectors found that four of the nine vehicles

inspected were offered for sale in a tampered condition. The tampering observed by the inspectors consisted of two vehicles missing the required catalytic convertor, three vehicles with missing or damaged exhaust heat riser tubes missing and three vehicles with damaged, capped, or missing vacuum lines for emission control systems (see attached Table I). Representatives of Respondent were informed of the inspection results by the Canton APCD inspectors and provided with a copy of the inspection report and copies of ORC § 3704.16, Ohio EPA Rules 3745-80-01 and 3745-80-02, and Ohio EPA anti-tampering program fact sheets.

17. On June 10, 2003, Canton APCD issued a warning letter to Respondent (addressed to Mr. Kerry Fuller) regarding the tampered vehicles identified during the June 9, 2003, inspection. Specifically, Canton APCD cited Respondent with violations of OAC Rule 3745-80-02(E) for knowingly offering tampered motor vehicles for sale. Canton APCD required that Respondent either repair or salvage the identified vehicles within 30 days of receipt of the NOV, and that Respondent supply verification documentation to Canton APCD within 14 days of completion of the repairs or salvage. Respondent did respond by telephone call to this warning letter, but to date has not provided the required documentation.

18. Canton APCD observed on June 27 and July 31, 2003, that the tampered condition of two of the cited vehicles identified during the June 9, 2003, inspection (per Finding 16 and attached Table I) as having been repaired. Specifically, Canton APCD observed that repairs had been made to the 1991 Jeep Grand Wagoneer and the 1986 Oldsmobile Cutlass Supreme (as identified in attached Table I).

19. Based on the above findings, the Director of Ohio EPA finds that Respondent violated OAC Rule 3745-80-02(E), ORC § 3704.16(C)(2), and ORC § 3704.05(G) for knowingly offering to sell motor vehicles that have been tampered with.

20. 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 Order:

Within fourteen (14) days after the effective date of these Orders, Respondent shall pay the amount of three thousand dollars (\$3,000) to Ohio EPA in settlement of Ohio EPA's claim for civil penalties, which may be assessed pursuant to ORC § 3704.99(E). Payment shall be made by an official check made payable to "Treasurer, State of Ohio" and shall be submitted to Brenda Case, or her successor, with a letter identifying the Respondent, to:

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

A copy of the check shall be sent to James A. Orlemann, Assistant Chief, Enforcement Section, or his successor, at the following address:

Division of Air Pollution Control
Ohio Environmental Protection Agency
P.O. Box 1049
Columbus, Ohio 43216-1049

VI. TERMINATION

Respondent's obligations under these Orders shall terminate when Respondent certifies in writing and demonstrate 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 the person authorized to sign in OAC Rule 3745-35-02(B)(1) for a corporation or a duly authorized representative of Respondent as that term is defined in the above-reference rule.

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 Respondents' operation of the facility specified in these Orders.

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 the Respondent.

IX. MODIFICATIONS

These Orders may be modified by mutual 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 by these Orders, unless otherwise specified in writing, shall be addressed to :

Canton City Health Department
Air Pollution Control Division
420 Market Avenue North
Canton, Ohio 44702-1544
Attention: Rick L. Miller, Staff Field Inspector III

and to:

Ohio Environmental Protection Agency
Lazarus Government Center
Division of Air Pollution Control
P.O. Box 1049
Columbus, Ohio 43216-1049
Attention: Thomas Kalman, Supervisor, Enforcement Section

or to such persons and addresses as may hereinafter 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 agree to comply with these Orders. Compliance with these Orders shall be a full accord and satisfaction for the Respondent's liability for the violations specifically cited herein.

Respondent hereby waive the right to appeal the issuance, terms and conditions, and service of these Orders, and Respondent hereby waive 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 the Respondent agree that if these

Orders are appealed by any other party to the Environmental Review Appeals Commission, or any court, Respondent retain the right to intervene and participate in such appeal. In such an event, Respondent shall continue to comply with these Orders unless said 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

Christopher Jones
Director

Date

IT IS SO AGREED:

Kerry's Motor World, Inc.

Signature

Date

Printed or Typed Name

Title

TABLE I

**Forrest Motors Wholesale Corp./Kerry's Motor World, Inc.
Summary of Violations of OAC Rule 3745-80-02(E) and ORC § 3704.16(C)(2)**

Inspection date	Vehicle offered for sale (year/make/model)	Vehicle Identification Number (VIN)	Description of tampering observed
09/25/96	1981 Buick Regal	1G4AM47A3CH260294	-No heat riser tube present.
09/25/96	1986 Mercury Cougar	1MEBP9235GH603665	-No heat riser tube present.
09/25/96	1982 Buick Skylark	1G4AC69R5CW491632	-Three vacuum hoses disabled (plugged with screws).
09/25/96	1985 Mercury Cougar	1MEBP9235FH679871	-No heat riser tube present.
10/09/01	1987 Ford Thunderbird	1FABP6033HH152925	-No fuel fill cap present.
10/09/01	1987 Buick Century	1G4AH8135HD454667	-No fuel fill cap present. -Oxygen sensor broken.
10/09/01	1986 GMC Jimmy 4x4	1G5CT18R7G0516290	-No heat riser tube or manifold shield present.
10/09/01	1985 Dodge Ram pickup	1B7FD14HXFS717958	-No air injection pump, catalytic convertor, oxygen sensor, or heat riser tube present.
06/09/03	1984 Ford Bronco II	1FMCU14S6EUD24598	-No catalytic convertor or heat shield present. -Heat riser tube and vacuum lines damaged.
06/09/03	1991 Jeep Grand Wagoneer	1J4GS5876MP800879	-No positive crankcase ventilation valve, air injection pump, or heat riser tube present. -Exhaust gas recirculation valve present, but disabled (no vacuum line). -Control vacuum lines disabled (plugged with screws).
06/09/03	1988 Ford Ranger pickup	1FTBR1OC4JUB92919	-No heat shield, catalytic convertor, muffler, or air filter present. -Heat riser tube damaged.
06/09/03	1986 Oldsmobile Cutlass Supreme	1G3GM47Y0GP355550	-Carburetor vacuum hose/clip damaged.