OHIO E.P.A.
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BEFORE THE

OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

Mac's Convenience Stores LLC, d.b.a. Circle K Midwest 315 Columbus Mall Columbus, Indiana 47201-6765	: : : :	Director's Final Findings and Orders

I certify this to be a true and accurate copy of the official documents as filed in the records of the Ohio Environmental Protection Agency.

By: _____ Date: 12-11-07

PREAMBLE

It is agreed by the parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to Mac's Convenience Stores LLC, d.b.a. Circle K Midwest ("Respondent") pursuant to the authority vested in the Director of the Ohio Environmental Protection Agency ("Ohio EPA") under Ohio Revised Code ("ORC") cc 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 has corporate offices located at 315 Columbus Mall, Columbus, Indiana and owns and operates a gasoline dispensing facility ("GDF") located at 1101 State Route 28, Milford, Clermont County, Ohio (Ohio EPA premise number 1413080436). The facility was purchased by Respondent in November 1997. The GDF is subject to the requirements of Ohio Administrative Code ("OAC") Rule 3745-21-09 concerning Stage II vapor control systems.

2. The Hamilton County Department of Environmental Services ("HCDOES") acts as an agent of the Ohio EPA for the Division of Air Pollution Control in Clermont County. The GDF identified in Finding 1 is an "air contaminant source" as defined by Ohio Administrative Code ("OAC") Rule 3745-15-01(C) and (W) and is subject to the permit requirements of the OAC Chapters 3745-31 and 3745-35.

3. On November 5, 1997, a Permit to Install ("PTI") 14-4458 was issued to the previous owner of the GDF, Thorton Oil Corporation, for the GDF, including three 12,000 gallon gasoline tanks, one 6,000 gallon diesel tank and one 6,000 gallon kerosene tank (emissions unit G001). Respondent obtained ownership of the PTI on April 12, 2004 by filing a transfer of ownership form with HCDOES. Emissions of volatile organic compounds ("VOCs"), as defined in OAC Rule 3745-21-01(B)(6), from the gasoline tanks are required to be controlled and are controlled by a vapor balance system ("VBS"). PTI 14-4458 also required Respondent to comply with the requirements for Stage II vapor control systems as outlined in OAC Rule 3745-21-09(DDD).

4. Specifically, PTI 14-4458 mandates that the permittee not cause, allow, or permit the transfer of gasoline from a stationary storage tank at the GDF into a motor vehicle after a specified date in OAC Rule 3745-21-04, which ranges from September 1993 to March 31, 1996, unless all vapors displaced from the motor vehicle are vented to a vapor control system which is designed to be operated to maintain an overall control efficiency of not less than ninety-five percent, by weight, for the VOC in the displaced vapors. Furthermore, PTI 14-4458 requires that the vapor control system be operated and maintained in accordance with the manufacturer's specifications and be free from defects as outlined in OAC Rule 3745-21-09(DDD)(1)(b). Also, PTI 14-4458 requires the permittee to immediately report any malfunctions of the GDF or its associated air pollution control systems to HCDOES. Finally, PTI 14-4458 requires that the permittee successfully meet all requirements regarding testing contained in OAC Rule 3745-21-09(DDD)(2) for the vapor control system. In intervals not to exceed one year, the PTI also requires the permittee to demonstrate compliance using the tests specified in OAC Rule 3745-21-09(DDD)(2).

5. On April 17, 2002, a Permit to Operate ("PTO") was issued to Thorton Oil Corporation for emissions unit G001. Respondent obtained ownership of PTO during the transfer of ownership of the PTI on April 12, 2004. As part of the terms and conditions of its PTO, Respondent must comply with the requirements including performing routine scheduled maintenance of the air pollution control equipment at the GDF in accordance with OAC Rule 3745-15-06(A), and reporting any malfunction of the GDF or any associated air pollution control system(s) to the appropriate Ohio EPA district office or local air agency in accordance with OAC Rule 3745-15-06(B).

6. On February 16, 2006, a representative from HCDOES inspected the facility to determine the compliance status with all applicable air pollution control regulations. During this inspection, HCDOES ascertained the following violations:

- Respondent indicated that the scheduled annual Stage II compliance test could not be completed because the vapor control system was not operating. Respondent further indicated that the vapor control system had been inoperable for at least three months prior to the inspection by HCDOES, and the Respondent continued operation of the GDF. These findings constituted violations of OAC Rule 3745-21-09(DDD)(1), the PTI and PTO, and ORC § 3704.05(C) and (G).

- Upon review of Respondent's records regarding the vapor control system, HCDOES discovered that Respondent had failed to perform the required annual Stage II compliance test scheduled for June 15, 2005 and continued operation of the GDF thereafter, in violation of the terms and conditions of PTI and PTO and ORC c 3704.05(C) and (G). The last complying test was performed on June 15, 2004.

- Respondent failed to inform HCDOES of the shutdown of the vapor control system, in violation of the terms and conditions of Respondent's PTI and PTO and ORC c 3704.05(G).

7. On February 17, 2006, Respondent contacted HCDOES and indicated that the Hasstech vapor control system was being repaired and that if the repairs were completed on February 17, 2006, a compliance test would be performed on the system. On February 17, 2006, HCDOES returned to the facility and confirmed that the repairs to the vapor control system had been completed and that the compliance test had been performed.

8. On February 28, 2006, HCDOES sent Respondent a Notice of Violation ("NOV") letter that detailed the violations HCDOES discovered during the February 16, 2006 compliance inspection. The NOV concluded with HCDOES requesting Respondent to submit a compliance plan that detailed what steps Respondent would perform to bring the GDF back into compliance. HCDOES requested that Respondent submit the compliance plan by March 15, 2006.

9. On March 14, 2006, Respondent provided HCDOES with a response to the NOV dated February 28, 2006. In its response, Respondent indicated that the vapor control system had been repaired and passed the Stage II testing. Respondent also indicated that the facility has a new manager, and record-keeping practices and reporting requirements will be met, consistent with the terms and conditions of the facility's PTI and PTO.

10. Based upon the above findings, the Director has determined that Respondent violated the following rules and laws:

a. From June 15, 2005 to February 17, 2006, Respondent failed to demonstrate compliance using all of the specified tests, in violation OAC Rule 3745-21-09(DDD)(2), the terms and conditions of the PTI and PTO, and ORC c 3704.05(C) and (G).

b. From June 15, 2005 to February 17, 2006, Respondent failed to perform the required annual Stage II compliance tests and continued operation of the GDF thereafter, in violation of OAC Rules 3745-21-09(DDD)(1)(c) and 3745-21-09(DDD)(2)(f), the terms and conditions of the PTI and PTO, and ORC c 3704.05(C) and (G).

c. Respondent failed to immediately inform HCDOES of the malfunction and shutdown of the vapor control system at the GDF and failed to submit a written statement to the Director within two weeks of the date the malfunction occurred, in violation of OAC Rule 3745-15-06(B), the terms and conditions of the PTI and PTO, and ORC c 3704.05(C) and (G).

d. Since at least February 16, 2003 until on or after February 16, 2006, Respondent failed to keep records of Stage II compliance tests conducted at the GDF for at least three years, in violation of OAC Rule 3745-21-09(DDD)(3), the terms and conditions of the PTI and PTO, and ORC c 3704.05(C) and (G).

11. 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 Orders:

1. Respondent shall pay the amount of fourteen thousand dollars ($14,000) in settlement of Ohio EPA's claims for civil penalties, which may be assessed pursuant to ORC Chapter 3704. Within fourteen (14) 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 eleven thousand and two hundred dollars ($11,200) of the total amount. The official check shall be submitted to Brenda Case, or her successor, together with a letter identifying the Respondent, to:

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

2. In lieu of paying the remaining two thousand and eight hundred dollars ($2,800) of civil penalty, Respondent shall fund a Supplemental Environmental Project ("SEP") by making a contribution in the amount of $2,800 to Ohio EPA's Clean Diesel School Bus Program Fund (Fund 5CD). Respondent shall make payment on or within thirty (30) days after the effective date of these Orders by tendering an official check made payable to "Treasurer, State of Ohio" for $2,800. The official check shall be submitted to Brenda Case, or her successor, together with a letter identifying the Respondent and Fund 5CD, to the above-stated address.

3. A copy of each of the above checks shall be sent to James A. Orlemann, Assistant Chief, SIP Development and Enforcement, or his successor, at the following address:

Ohio EPA
Division of Air Pollution Control
P.O. Box 1049
Columbus, Ohio 43216-1049

4. Should Respondent fail to fund the SEP within the required time frame set forth in Order 2, Respondent shall immediately pay to Ohio EPA $2,800 of the civil penalty in accordance with the procedures in Order 1.

VI. TERMINATION

Respondent's obligations under these Orders shall terminate upon Ohio EPA's receipt of the official checks 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:

Hamilton County Department of Environmental Services
250 William Howard Taft Road
Cincinnati, Ohio 45219
Attn: Kerri Castlen

and to:

Ohio Environmental Protection Agency
Lazarus Government Center
Division of Air Pollution Control
50 West Town Street, Suite 700
Columbus, Ohio 43216-1049
Attn: Thomas Kalman, Manager, Enforcement Section

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 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.

IT IS SO ORDERED AND AGREED:

Ohio Environmental Protection Agency

Chris Korleski
Director

12-7-07
Date

IT IS SO AGREED:

Mac's Convenience Stores LLC,
d.b.a. Circle K Midwest

Signature

11/20/07
Date

KEVIN MERRITT
Printed or Typed Name

DIRECTOR OF FACILITIES
Title