

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

BP America Inc., d.b.a. : Director's Final Findings
BP Products North America : and Orders
4101 Winfield Road :
Warrenville, Illinois 60555 :

PREAMBLE

It is agreed by the parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to BP America Inc., d.b.a. BP Products North America ("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 has corporate offices located at 4101 Winfield Road in Warrenville, Illinois and owns and operates gasoline dispensing facilities ("GDFs") located at 30502 Lakeland Blvd., Wickliffe, Lake County, Ohio ("BP #22437") and 2481 SOM Center Road, Willoughby, Lake County, Ohio ("BP #22442"). These GDFs are subject to the requirements of Ohio Administrative Code ("OAC") Rule 3745-21-09(DDD) concerning Stage II vapor control systems.

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: W. T. Full Date: 12/29/08

2. On December 22, 2005 and January 3, 2006, Respondent submitted applications for and received permit-by-rules for BP #22442 and BP #22437 (Ohio EPA premise numbers 0243161064 and 0243151062) pursuant to OAC Rule 3745-31-03(A)(4). OAC Rule 3745-31-03(A)(4) provides for exemptions from the requirement to obtain a permit-to-install for certain air contaminant sources. However, these exemptions are valid only as long as the owner or operator complies with all of the permit-by-rule general provisions, meets qualifying criteria defined in the applicable permit-by-rule and complies with all of the requirements under the applicable permit-by-rule specific provisions.

3. 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.

4. OAC Rule 3745-21-09(DDD)(1)(b) states, in part, that no owner or operator of a GDF may cause, allow or permit the transfer of gasoline from a stationary tank at a GDF into a motor vehicle unless the vapor control system is installed, operated and maintained in accordance with the manufacturer's specifications and the applicable CARB certification, and is free from defect.

5. OAC Rule 3745-21-09(DDD)(1)(c) states, in part, that no owner or operator of a GDF may cause, allow or permit the transfer of gasoline from a stationary tank at a GDF into a motor vehicle unless the vapor control system successfully passes the testing requirements contained in OAC Rule 3745-21-09(DDD)(2).

6. OAC Rule 3745-21-09(DDD)(2)(d) requires, in part, the owner or operator of a GDF to perform and demonstrate compliance with the dynamic pressure performance test at intervals not to exceed five years.

7. OAC Rule 3745-21-09(DDD)(2)(f) requires the owner or operator of a GDF to perform and comply with any vapor control system tests specified in the applicable California Air Resources Board ("CARB") certification. As part of the required CARB testing for the above-mentioned GDFs, an air-to-liquid ("A/L") ratio test is required to be performed annually and any fueling point not capable of demonstrating compliance with the performance standards of the A/L ratio test is deemed to be defective and is required to be removed from service.

BP #22437

8. On June 26, 2007, Respondent conducted an annual Stage II compliance test at this Facility. As part of the Stage II compliance test, an A/L ratio test was performed on each of the twelve dispensers located at this Facility. Based upon the results of the tests, dispenser numbers 3, 5 and 8 failed the test and dispenser 12 passed the test for two of the three grades of gasoline. Dispenser 12 was not tested while fueling with the premium grade because the vapor recovery line was bent, making the dispenser inoperable. The failure to successfully pass the testing requirements in

OAC Rule 3745-21-09(DDD)(2) for dispensers 3, 5 and 8 while causing, allowing or permitting the transfer of gasoline from a stationary storage tank into a motor vehicle was in violation of ORC § 3704.05(G) and OAC Rule 3745-21-09(DDD)(1)(c). By letter dated July 16, 2007, Ohio EPA notified Respondent of the violations of OAC Rule 3745-21-09(DDD).

9. On August 3, 2007, dispensers 3, 5 and 8 were retested to determine compliance with OAC Rule 3745-21-09(DDD). Dispenser 5 passed the test while dispensers 3 and 8 once again failed the A/L ratio test and dispenser 12 still was not repaired. Dispensers 3 and 8 were not taken out of service between tests. The failure to successfully pass the testing requirements in OAC Rule 3745-21-09(DDD)(2) for dispensers 3 and 8 while causing, allowing or permitting the transfer of gasoline from a stationary storage tank into a motor vehicle was a violation of ORC § 3704.05(G) and OAC Rule 3745-21-09(DDD)(1)(c). The failure to complete a full successful passing test for dispenser 12 within one year from the last test (July 12, 2006) was in violation of OAC Rule 3745-21-09(DDD)(2)(f) and ORC § 3704.05(G).

10. On September 7, 2007, dispensers 3 and 8 were retested to determine compliance with OAC Rule 3745-21-09(DDD). Dispensers 3 and 8 passed the test. Dispenser 12 was still inoperable, in violation of ORC § 3704.05(G) and OAC Rule 3745-21-09(DDD)(2)(f).

11. On October 5, 2007, an A/L ratio retest was to be performed on dispenser 12. The retest was not performed because no repairs had been made and the dispenser was in the same condition as it was on September 7, 2007. The continuing failure to complete a full successful passing test for dispenser 12 within one year of the last test was in violation of ORC § 3704.05(G) and OAC Rule 3745-21-09(DDD)(2)(f).

12. On December 10, 2007, Respondent retested dispenser 12 to determine compliance with OAC Rule 3745-21-09(DDD). Dispenser 12 had been repaired and passed the retest.

BP #22442

13. On June 26, 2007, Ohio EPA conducted an inspection at this GDF to determine compliance with the Stage II annual static leak and A/L ratio tests and the five-year dynamic pressure performance test. At the time of this inspection, the static leak test passed. The dynamic pressure performance test was unable to be performed because the dispensers were not piped properly. The A/L ratio test was not performed due to the repairs that needed to be made to the piping. The failure to properly install, operate and maintain the vapor control system and the failure to successfully pass the testing requirements in OAC Rule 3745-21-09(DDD)(2) while causing, allowing or permitting the transfer of gasoline from a stationary storage tank into a motor vehicle was in violation of ORC § 3704.05(G) and OAC Rules 3745-21-09(DDD)(1)(b) and (c). The failure to complete a full successful passing dynamic pressure performance test within five years from the last test (January 4, 2002) was in violation of OAC Rule 3745-

21-09(DDD)(2)(d) and ORC § 3704.05(G). By letter dated January 29, 2008, Ohio EPA notified Respondent of the violations of OAC Rule 3745-21-09(DDD).

14. On February 21, 2008, Respondent tested the dispensers to determine compliance with OAC Rule 3745-21-09(DDD). The dynamic pressure performance test and static leak test passed, however, the A/L ratio test failed for the regular grade of gasoline for dispensers 5, 6, 7, 8, 9, 11 and the mid-grade of gasoline for dispenser 16. The failure to properly install, operate and maintain the vapor control system and to successfully pass the testing requirements in OAC Rule 3745-21-09(DDD)(2) for dispensers 5, 6, 7, 8, 9, 11 and 16 while causing, allowing or permitting the transfer of gasoline from a stationary storage tank into a motor vehicle was in violation of ORC § 3704.05(G) and OAC Rules 3745-21-09(DDD)(1)(b) and (c). The failure to complete a full successful passing test for all 16 dispensers within one year from the last test (July 12, 2006) was in violation of OAC Rule 3745-21-09(DDD)(2)(f) and ORC § 3704.05(G).

15. On March 7, 2008, Respondent retested dispensers 5, 6, 7, 8, 9, 11 and 16 to determine compliance with OAC Rule 3745-21-09(DDD). All of the dispensers had been repaired and passed the retest.

16. The Director has determined that due to the violations listed in Finding Nos. 7, 8, 9, 10, 12 and 13 of these Orders, Respondent failed to comply with the permit-by-rule requirements outlined in OAC Rule 3745-31-03(A)(4) and, therefore, the permit-by-rule exemption for BP #22437 and BP #22442 are no longer valid pursuant to OAC Rule 3745-31-03(A)(4).

17. 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. Within thirty (30) days from the effective date of these Orders, Respondent shall submit new permit-by-rule notifications to Ohio EPA for BP #22437 and BP #22442 in accordance with OAC Rule 3745-31-03(A)(4)(a).

2. Respondent shall pay the amount of sixty-six thousand eight hundred and fifty dollars (\$66,850) 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 fifty-three thousand four hundred and eighty dollars (\$53,480) 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
50 West Town Street, Suite 700
P.O. Box 1049
Columbus, Ohio 43216-1049

3. In lieu of paying the remaining thirteen thousand three hundred and seventy dollars (\$13,370) of civil penalty, Respondent shall fund a Supplemental Environmental Project ("SEP") by making a contribution in the amount of \$13,370 to Ohio EPA's Clean Diesel School Bus Program Fund (Fund 5CD0). 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 \$13,370. The official check shall be submitted to Brenda Case, or her successor, together with a letter identifying the Respondent and Fund 5CD0, to the above-stated address.

4. 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
50 West Town Street, Suite 700
P.O. Box 1049
Columbus, Ohio 43216-1049

5. Should Respondent fail to fund the SEP within the required time frame set forth in Order 3, Respondent shall immediately pay to Ohio EPA \$13,370 of the civil penalty in accordance with the procedures in Order 2.

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 the purposes of these Orders, a responsible official is a principal executive officer of at least the level of vice president or his duty authorized representative.

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 facilities.

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
2110 East Aurora Road
Twinsburg, Ohio 44087
Attn: Dennis Bush

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

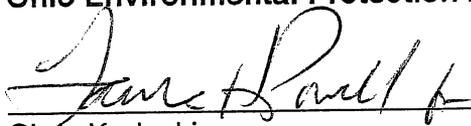
The effective date of these Orders is the date these Orders are entered into the Ohio EPA Director's journal.

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

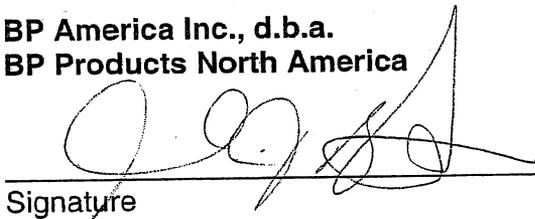


Chris Korleski
Director

12-29-08
Date

IT IS SO AGREED:

**BP America Inc., d.b.a.
BP Products North America**



Signature

Joseph J. Bookout
Printed or Typed Name

VP Asset Management
Title

12/16/08
Date