OHIO E.P.A.

NOV - 4 2009

ENTERED DIRECTOR'S JOURNAL

BEFORE THE

OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

Circle K Midwest	:	Director's Final Findings
4080 W. Jonathan Moore Pike	:	and Orders
Columbus, IN 47201	:	

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: 11.4.09

PREAMBLE

It is agreed by the parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to 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") §§ 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 facilities (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 makes the following findings:

1. Respondent has corporate offices located at 4080 W. Jonathan Moore Pike, Columbus, Indiana and owns and operates gasoline dispensing facilities ("GDFs") located at 1150 South Broadway, Geneva, Ashtabula County ("Circle K #5204"); 2808 Grove Avenue, Lorain, Lorain County ("Circle K #5318"); 5825 South Main Street, Ashtabula, Ashtabula County ("Circle K #5209"); 36701 Chester Street, Avon, Lorain County ("Circle K #5320"); 10630 Loveland-Madeira Road, Loveland, Clermont County ("Circle K #5557"); 1101 State Route 28, Milford, Clermont County ("Circle K #5558"); 1031 Harrison Avenue, Harrison, Hamilton County ("Circle K #0059"); and 2166 Pleasant Avenue, Hamilton, Butler County ("Circle K #5217"). These GDFs are subject

to the requirements of Ohio Administrative Code ("OAC") Rule 3745-21-09(DDD) concerning Stage II vapor control systems.

2. Hamilton County Department of Environmental Services ("HCDOES") is a contractual agent for Ohio EPA in Butler County, Hamilton County, and Clermont County for the administration of Ohio's air pollution rules and laws.

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)(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 GDF(s), an air-to-liquid ("A/L") ratio test and a static leak test are 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.

7. 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.

8. OAC Rule 3745-21-09(DDD)(3)(a)(vi) states, in part, that any owner or operator of a GDF subject to the requirements of paragraph (DDD)(1) shall maintain records demonstrating proof of attendance and completion of training required by Ohio EPA for the operator or local manager of the GDF.

9. Respondent employs Tanknology, Inc. ("Tanknology") to perform the required CARB testing at the subject GDFs. Pursuant to its agreement with Respondent, Tanknology scheduled and performed all tests referenced in these Orders.

10. Respondent employs Petro-Com, Corp. ("Petro-Com"), whose business address is 32523 Lorain Road, North Ridgeville, Ohio 44039, to perform maintenance of the Stage II vapor control systems at the GDFs so that the Stage II vapor control systems are in compliance with OAC Rule 3745-21-09(DDD) and the applicable permits to install.

Circle K #5204

11. On September 9, 2004, a Permit to Install ("PTI") 02-19863 was issued to Respondent for Circle K #5204 (Ohio EPA facility ID number 0204030453). On August 23, 2004, a Permit to Operate ("PTO") application was submitted to Ohio EPA. PTI 02-19863 and OAC Rule 3745-21-09(DDD) require Respondent to comply with the requirements for Stage II vapor control systems at this facility. On February 13, 2009, Respondent submitted a written modification for a Permit-by-Rule ("PBR") to Ohio EPA for this GDF.

12. On April 25, 2007, Respondent conducted an annual Stage II compliance test at this facility. Respondent failed the A/L ratio test for dispensers 1, 2, 5, and 7. Respondent was operating these dispensers prior to and after the failed A/L ratio test. The failure to successfully pass the testing requirements in OAC Rule 3745-21-09(DDD)(2) for dispensers 1, 2, 5, and 7 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). On May 14, 2007, dispensers 1, 2, 5, and 7 passed the A/L ratio retest.

13. On May 13, 2008, Respondent conducted an annual Stage II compliance test at this facility. As part of the Stage II compliance test, an A/L ratio test and static leak test were performed. Based upon the results of the tests, the static leak test could not be performed due to low gasoline volume. The A/L ratio test failed for dispenser numbers 2 (regular only), 7 (all grades), 8 (all grades) and 9 (premium only). Respondent was operating these dispensers prior to and after the failed A/L ratio test. The failure to successfully pass the testing requirements in OAC Rule 3745-21-09(DDD)(2) for dispensers 2, 7, 8 and 9 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).

14. On September 3, 2008, Respondent conducted a static leak test to determine compliance with OAC Rule 3745-21-09(DDD). The static leak test failed due to leaking vacuum pump motors in dispensers 1-2 and 9-10. The A/L ratio test was not conducted due to the leaking vacuum pump motors. Respondent was operating these dispensers prior to and after the failed static leak test and A/L ratio test. Operating the vapor control system with a malfunctioning vacuum pump motor and failing 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 were violations of ORC § 3704.05(G) and OAC Rule 3745-21-09(DDD)(1)(b) and (c). In addition, the Director has determined that Respondent's failure to complete a full successful passing static leak test and A/L ratio test within one year from the last test (May 14, 2007) was in violation of OAC Rule 3745-21-09(DDD)(2)(f) and ORC § 3704.05(G). By letter dated September 16, 2008, Ohio EPA notified Respondent of the violations of OAC Rule 3745-21-09(DDD).

15. On September 29, 2008, Respondent conducted another retest at the facility. The static leak test passed. The A/L ratio test passed for all dispensers except dispenser 10. The vacuum pump motor on dispenser 10 was leaking and needed to be replaced. Respondent was operating this dispenser prior to and after the failed A/L ratio test. Operating the vapor control system with a malfunctioning vacuum pump motor and failing to successfully pass the testing requirements in OAC Rule 3745-21-09(DDD)(2) for dispenser 10 while causing, allowing, or permitting the transfer of gasoline from a stationary storage tank into a motor vehicle were violations of ORC § 3704.05(G) and OAC Rule 3745-21-09(DDD)(1)(b) and (c).

16. On October 28, 2008, Respondent retested dispenser 10 to determine compliance with OAC Rule 3745-21-09(DDD). The vacuum motor on dispenser 10 had been repaired and dispenser 10 passed the retest.

17. On February 19, 2009, Respondent conducted the annual and five-year Stage II compliance tests at this GDF. The static leak, A/L ratio and dynamic pressure performance test all passed. At the inspection, Respondent was not able to produce records demonstrating proof of attendance and completion of the training for one employee as required by OAC Rule 3745-21-09(DDD)(3)(a)(vi) and ORC § 3704.05(G) because the employee had just passed the course and the training certificate had not been issued yet. A copy of the training certificate was provided to Ohio EPA on September 15, 2009. By letter dated June 22, 2009, Ohio EPA notified Respondent of this violation.

Circle K #5318

18. On June 30, 1992, PTI 02-6550 was issued for this GDF (Ohio EPA facility ID number 0247080866). On January 28, 1992, a PTO application was submitted for this facility. OAC Rule 3745-21-09(DDD) requires Respondent to comply with the requirements for Stage II vapor control systems at this facility.

19. On May 14, 2008, Respondent conducted an annual Stage II compliance test at this facility. Upon arrival, Ohio EPA noted that the regular grade for dispenser 4 and all three grades for dispenser 6 were bagged off while all other dispensers were in use. As part of the Stage II compliance test, a static leak test was conducted and failed due to a leak in a drop tube. The A/L ratio test was not conducted due to this leak. Respondent was dispensing gasoline from other dispensers at this GDF prior to and after Respondent failed the static leak test. 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 a violation of ORC § 3704.05(G) and OAC Rule 3745-21-09(DDD)(1)(c). In addition, Respondent failed to maintain records demonstrating proof of attendance and completion of the training required by Ohio EPA, in violation of OAC Rule 3745-21-09(DDD)(3)(a)(vi) and ORC § 3704.05(G).

20. On September 2, 2008, Respondent attempted to have the dispensers retested. At this time, the static leak test and the A/L ratio test could not be conducted because the vacuum pump motors on all the dispensers were leaking and needed to be replaced. During this timeframe, Respondent continued to dispense gasoline into motor vehicles. Operating the vapor control system with malfunctioning vacuum pump motors and failing 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 were violations of ORC § 3704.05(G) and OAC Rule 3745-21-09(DDD)(1)(b) and (c). The Director has determined that Respondent's failure to complete a full successful passing test for dispensers 1 through 6 within one year from the last test (June 7, 2007) was in violation of OAC Rule 3745-21-09(DDD)(2)(f) and ORC § 3704.05(G).

21. On April 8, 2009, Respondent conducted and passed static leak and A/L ratio retests at this GDF. This test was not witnessed by Ohio EPA personnel.

22. On April 21, 2009, Respondent conducted a five-year Stage II compliance test at this GDF. The static leak test and the dynamic pressure performance test passed, while the A/L ratio test for dispenser 5 failed. Dispenser 5 failed due to a malfunctioning vacuum pump motor. Respondent was dispensing gasoline prior to and after the failed A/L ratio test. Operating the vapor control system with a malfunctioning vacuum pump motor and failing 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 were violations of ORC § 3704.05(G) and OAC Rule 3745-21-09(DDD)(1)(b) and (c).

23. On May 11, 2009, Respondent conducted a retest at this GDF. The dynamic pressure performance test passed but dispenser 5 once again failed the A/L ratio test because it had no vacuum. Respondent was dispensing gasoline prior to and after the failed A/L ratio test. Operating the vapor control system with a malfunctioning vacuum pump motor and failing 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 were violations of ORC § 3704.05(G) and OAC Rule 3745-21-09(DDD)(1)(b) and (c). On June 11, 2009, dispenser 5 passed an A/L ratio retest.

24. On May 22, 2009, Respondent submitted, to Ohio EPA, a certificate of training for this GDF's manager, demonstrating proof of attendance and completion of the training required by OAC Rule 3745-21-09(DDD)(3)(a)(vi).

Circle K #5209

25. On February 8, 1984, PTI 02-1377 was issued for this GDF (Ohio EPA facility ID number 0204010276). In 1995, Stage II vapor control equipment was installed at this facility to comply with Stage II vapor control systems requirements as specified in OAC Rule 3745-21-09(DDD). On September 16, 1994, a PTO was issued for this facility which expired on September 15, 1997. On May 4, 2009, Respondent submitted a written modification for a PBR, to Ohio EPA, for this GDF.

26. On May 12, 2008, Respondent conducted an annual Stage II compliance test at this facility. The static leak test passed. The A/L ratio test was conducted and failed on dispenser 2's premium grade and dispenser 4's premium grade. Dispenser 2's premium grade had been bagged off prior to the test. Respondent was operating dispenser 4 prior to and after it failed the A/L ratio test. The failure to successfully pass the testing requirements in OAC Rule 3745-21-09(DDD)(2) for dispenser 4 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). Also, Respondent's failure to complete a full successful passing test for dispensers 2 and 4 within one year from the last test (April 25, 2007) was in violation of OAC Rule 3745-21-09(DDD)(2)(f) and ORC § 3704.05(G).

27. On September 3, 2008, a retest was conducted. The A/L ratio test for dispenser 2 passed, but dispenser 4 failed the A/L ratio retest, in violation of ORC § 3704.05(G) and OAC Rule 3745-21-09(DDD)(1)(c). By letters dated September 4 and September 16, 2008, Ohio EPA notified Respondent of the violations of OAC Rule 3745-21-09(DDD).

28. On September 29, 2008, dispenser 4 passed a retest for the A/L ratio test. By letter dated October 9, 2008, Ohio EPA acknowledged the return to compliance.

Circle K #5320

29. On July 6, 2000, PTI 02-14068 was issued for this GDF (Ohio EPA facility ID number 0247020966). PTI 02-14068 and OAC Rule 3745-21-09(DDD) require Respondent to comply with the requirements for Stage II vapor control systems at this facility. On May 4, 2009, Respondent submitted a PBR, to Ohio EPA, for this GDF.

30. On March 15, 2007, Respondent conducted an annual Stage II compliance test at this facility. Respondent failed the static leak test and the A/L ratio test for dispenser 3. Respondent was dispensing gasoline into motor vehicles prior to and after the failed static leak test and failed A/L ratio test for dispenser 3. 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 a violation of ORC § 3704.05(G) and OAC Rule 3745-21-09(DDD)(1)(c). On April 11, 2007, dispenser 3 passed the A/L ratio test and on May 16, 2007, the facility passed the static leak test.

31. On February 25, 2008, Respondent conducted an annual Stage II compliance test at this Facility. As part of the Stage II compliance test, the static leak test failed due to a leaking vacuum pump motor. The A/L ratio test passed. This test was not witnessed by Ohio EPA personnel. Operating the vapor control system with a malfunctioning vacuum pump motor and failing 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 were violations of ORC § 3704.05(G) and OAC Rule 3745-21-09(DDD)(1)(b) and (c).

32. On March 24, 2008, Respondent conducted a retest at the facility. The static leak test passed, however the A/L ratio test on dispensers 15 and 16 failed. By letter dated May 20, 2008, Ohio EPA notified Respondent of the violations of OAC Rule 3745-21-09(DDD).

33. On June 9, 2008, Respondent conducted another retest at the facility. The A/L ratio test passed for dispensers 15 and 16. By letter dated June 23, 2008, Ohio EPA acknowledged the return to compliance.

34. On February 9, 2009, Respondent conducted an annual Stage II compliance test at this GDF. The static leak test passed but the A/L ratio test could not be performed because Tanknology had the wrong equipment. On April 14, 2009, an A/L ratio test was conducted and all dispensers passed.

Circle K #5557

35. On May 28, 2008, Respondent attempted to conduct the annual Stage II compliance test at this GDF but could not test the vapor control system due to excess ullage. Then, during a July 11, 2008 inspection, the Hasstech vapor control system was turned off while gasoline was still being dispensed. A retest was performed on July 18, 2008. At this time, Respondent passed the static leak test but failed the A/L ratio test for dispensers 3, 6, 9, 13 and 14. Respondent was dispensing gasoline prior to and after the failed A/L ratio test. 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 and the failure to complete a full successful passing static leak test within one year from the last passing test (May 28, 2007) were violations of ORC § 3704.05(G) and OAC Rules 3745-21-09(DDD)(1)(b), (c), and (2)(f). On September 10, 2008, dispensers 3, 6, 9, 13 and 14 passed a retest.

36. On April 17, 2009, Respondent conducted the annual Stage II compliance test for this GDF. The static leak test failed and the A/L ratio test failed for dispensers 13, 14 and 16 due to leaking vacuum pump motors. Respondent was dispensing gasoline prior to and after the failed static leak and A/L ratio tests. Operating the vapor control system with a malfunctioning vacuum pump motors and failing 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 were violations of ORC § 3704.05(G) and OAC Rule 3745-21-09(DDD)(1)(b) and (c). On July 16, 2009, Respondent conducted and passed the static leak and A/L ratio retests at this GDF.

Circle K #5558

37. On January 2, 2008, Respondent conducted an annual Stage II compliance test at this GDF. The static leak test failed because of a leaking spill bucket drain and the A/L ratio test was not conducted. On July 25, 2008, Respondent was unable to conduct a static leak test or A/L ratio retest at this GDF because the Hasstech vapor control system was turned off since it was not working. Respondent was dispensing gasoline prior to and after the failed static leak and A/L ratio tests. 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 were violations of ORC § 3704.05(G) and OAC Rules 3745-21-09(DDD)(1)(b) and (c).

38. On September 8, 2008, Respondent conducted a retest at this GDF. The static leak test passed; however, all dispensers failed the A/L ratio test. Respondent was dispensing gasoline prior to and after the failed A/L ratio test. 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 were violations of ORC § 3704.05(G) and OAC Rules 3745-21-09(DDD)(1)(b) and (c).

39. On February 23, 2009, Respondent conducted another retest at this GDF. At this time, the static leak test failed due to a leaking vapor pipe joint and the A/L ratio test was not conducted due to the static leak test failure. Respondent was dispensing gasoline prior to and after the failed static leak and A/L ratio tests. 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 and the failure to complete a full successful passing static leak test and A/L ratio test within one year from the last test (January 2, 2007) were violations ORC § 3704.05(G) and OAC Rules 3745-21-09(DDD)(1)(b), (c), and (2)(f). On June 22, 2009, the static leak and A/L ratio retests passed.

Circle K #0059

40. On February 26, 2009, Respondent conducted an annual Stage II compliance test at this GDF. The A/L ratio test failed for dispensers 2, 3, 4 and 8. Dispensers 5, 6, and 7 were not pumping and could not be tested. Respondent was dispensing gasoline prior to and after the failed A/L ratio test. 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 were violations of ORC § 3704.05(G) and OAC Rules 3745-21-09(DDD)(1)(b) and (c).

41. On March 3, 2009, Respondent conducted an A/L ratio retest and dispensers 2, 3, 4, 5, 6, 7 and 8 passed.

42. On June 23, 2009, Respondent conducted an A/L ratio retest and all dispensers passed except dispenser 4 due to no vacuum. This dispenser was taken out of service at the time of the inspection. On June 29, 2009, HCDOES drove by this GDF and observed dispenser 4 being used without passing the A/L ratio test. 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 a violation of ORC § 3704.05(G) and OAC Rule 3745-21-09(DDD)(1)(c). On July 20, 2009, dispenser 4 passed an A/L ratio retest.

Circle K #5217

43. On March 2, 2009, Respondent conducted the annual Stage II compliance test for this GDF. The static leak test passed; however, the A/L ratio test failed for dispensers 1, 2, and 4. On March 10, 2008, an A/L ratio retest was conducted and dispensers 1 and 4 passed the A/L ratio retest while dispenser 2 failed due to a bad vacuum pump motor. Respondent was dispensing gasoline prior to and after the failed A/L ratio tests. 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 a violation of ORC § 3704.05(G) and OAC Rule 3745-21-09(DDD)(1)(b) and (c).

44. On July 2, 2009, another retest was conducted and dispensers 1, 2 and 4 failed the A/L ratio test. Dispensers 1, 2 and 4 were using nozzles that were not certified by CARB for the Stage II vapor control system being used at this GDF. Respondent was dispensing gasoline prior to and after the failed A/L ratio tests. Operating the vapor control system using improper equipment and failing 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 a violation of ORC § 3704.05(G) and OAC Rule 3745-21-09(DDD)(1)(b) and (c). By letter

dated July 15, 2009, HCDOES issued Respondent a warning letter for failing to conduct a retest at this GDF.

45. On July 31, 2009, Respondent conducted an A/L ratio retest and dispensers 1, 2, and 4 passed.

46. On August 6, 2009, Respondent conducted an A/L ratio retest at this GDF. Dispensers 1 and 3 failed the A/L ratio retest. Respondent was dispensing gasoline prior to and after the failed A/L ratio tests. 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 a violation of ORC § 3704.05(G) and OAC Rule 3745-21-09(DDD)(1)(c). On August 27, 2009, all dispensers passed the A/L ratio retest. An Ohio EPA inspector was not present for the August 27, 2009 retest. On August 31, 2009, dispensers 1 and 3 passed the A/L ratio retest, and an Ohio EPA inspector was present for the test.

47. 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. For the next two ozone seasons (April 1, 2010 – October 31, 2010 and April 1, 2011 – October 31, 2011), starting two weeks prior to the start of the ozone season, i.e., by March 15, 2010 and March 15, 2011, and continuing until October 31, 2010 and October 31, 2011, respectively, Respondent shall conduct weekly inspections of the Stage II vapor control systems at Circle K #5204, Circle K #5209, Circle K #5318, Circle K #5320, Circle K #5557, Circle K #5558, Circle K #0059, and Circle K #5217, checking for leaks, malfunctions or damage to the systems and shall keep records of these inspections and any repairs made. The inspections shall be recorded in an inspection log or checklist. Copies of the inspection logs or checklists shall be submitted to Ohio EPA or the local air agency during the middle and at the end of the ozone season. Specifically, copies of the weekly inspection records for the period from March 15 through July 31 shall be submitted by August 14 of that year. Copies of the weekly inspection records for August 1 through October 31 shall be submitted by November 14 of that year.

2. For the next two ozone-producing seasons (i.e., April 1, 2010 – October 31, 2010 and April 1, 2011 – October 31, 2011), Respondent shall perform and pass static leak and A/L ratio tests at Circle K #5204, Circle K #5209, Circle K #5318, Circle K #5320, Circle K #5557, Circle K #5558, Circle K #0059, and Circle K #5217, prior to the beginning (during March) of each ozone season and during August of each ozone

season. Respondent shall notify Ohio EPA or the local air agency of such testing at least fourteen (14) days prior to any test. The results of these tests shall be submitted to Ohio EPA within fourteen (14) days after completion of the tests.

3. Respondent shall pay the amount of one hundred thousand dollars ($100,000) in settlement of Ohio EPA's claims for civil penalties, which may be assessed pursuant to ORC Chapter 3704. 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 eighty thousand dollars ($80,000) 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

4. In lieu of paying the remaining twenty thousand dollars ($20,000) of the civil penalty, Respondent shall fund a Supplemental Environmental Project ("SEP") by making a contribution in the amount of $20,000 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 $20,000. 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.

5. 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

6. Should Respondent fail to fund the SEP within the required time frame set forth in Order 4, Respondent shall immediately pay to Ohio EPA $20,000 of the civil penalty in accordance with the procedures in Order 3.

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:

For Circle K #5204, Circle K #5318, Circle K #5209, and Circle K #5320 to:

Ohio Environmental Protection Agency
Northeast District Office
2110 East Aurora Road
Twinsburg, Ohio 44087

Attn: Tim Fischer

For Circle K #5557, Circle K #5558, Circle K #0059, and Circle K #5217 to:

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

and for all GDFs 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.

ORDERED AND AGREED:

Ohio Environmental Protection Agency

Chris Korleski
Director

11/2/09
Date

AGREED:

Circle K Midwest

Signature

10/28/09
Date

PAUL RODRIGUEZ
Printed or Typed Name

Vice President
Title