OHIO E.P.A.

AUG 20 2009

ENTERED DIRECTOR'S JOURNAL

BEFORE THE

OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

Saif Khan	:	Director's Final Findings
d.b.a. Lakeland Citgo	:	and Orders
30460 Lakeland Blvd.	:	
Wickliffe, Ohio 44092	:	

PREAMBLE

It is agreed by the parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to Saif Khan, d.b.a. Lakeland Citgo ("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 heirs and successors in interest liable under Ohio law. No change in ownership 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 makes the following findings:

1. Respondent owns and operates a gasoline dispensing facility ("GDF") located at 30460 Lakeland Blvd., Wickliffe, Lake County, Ohio (Ohio EPA ID 0243151355). This GDF is 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: _____ Date: 8-20-09

2. On April 6, 2004, Permit-to-Install ("PTI") 02-19108 was issued by Ohio EPA to the previous owner East 305 & Lakeland Blvd LLC, d.b.a. Fancy Nancy's Citgo. PTI #02-19108 requires Respondent to comply with the requirements for Stage II vapor control systems as specified in OAC Rule 3745-21-09(DDD). On April 24, 2006, ownership of this GDF was transferred from Fancy Nancy's Citgo to Respondent.

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. OAC Rules 3745-21-09(DDD) and 3745-31-02 were adopted by the Director pursuant to ORC Chapter 3704.

4. OAC Rule 3745-21-09(DDD)(1)(b) provides, 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 CARB certification. As part of the required CARB testing for the above-mentioned GDF, an air-to-liquid ("A/L") ratio test and a static leak 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.

7. On September 28, 2006, Ohio EPA conducted an inspection at this GDF to determine compliance with requirements of OAC Rule 3745-21-09(DDD). The static leak test passed the annual testing requirements; however, the A/L ratio test failed due to multiple error codes on the Stage II vapor control system. On October 11, 2006 and January 12, 2007, Respondent conducted A/L ratio retests and both times the tests failed due to problems with the Stage II vapor control system. Specifically, on January 12, 2007, several dispenser nozzles and hoses needed to be replaced. Respondent was operating the dispensers prior to and after each failed A/L ratio test. The failure to operate the Stage II vapor control system free of defect and 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 are violations of PTI 02-19108, ORC § 3704.05(C) and (G) and OAC Rule 3745-21-09(DDD)(1)(b) and (c). By letter dated January 21, 2007, Ohio EPA notified Respondent of these violations. A passing A/L ratio retest was conducted on February 22, 2007.

8. On November 5, 2007, Respondent conducted the 2007 annual static leak and A/L ratio tests at this GDF. The static leak test passed the annual testing requirements; however, the A/L ratio test, once again, failed this year due to multiple error codes on the Stage II vapor control system. On May 28, 2008, an A/L ratio retest was conducted and failed. Respondent was operating the dispensers prior to and after each failed A/L ratio test. The failure to operate the Stage II vapor control system free of defect and 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 are violations of PTI 02-19108, ORC § 3704.05(C) and (G) and OAC Rule 3745-21-09(DDD)(1)(b) and (c). By letter dated January 21, 2007, Ohio EPA notified Respondent of these violations. A passing A/L ratio retest was conducted on July 17, 2008.

9. On December 17, 2008, Respondent conducted the 2008 annual static leak and A/L ratio tests at this GDF. The static leak test passed; however, the A/L ratio test failed for dispensers 4, 8 and 9. On January 15, 2009, an A/L ratio retest was conducted. Dispenser 4 passed the retest while dispensers 8 and 9 failed. Respondent was operating these dispensers prior to and after each failed A/L ratio test. The failure to operate the Stage II vapor control system free of defect and 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 are violations of PTI 02-19108, ORC § 3704.05(C) and (G) and OAC Rule 3745-21-09(DDD)(1)(b) and (c). On March 9, 2009, an A/L ratio retest passed for both dispensers 8 and 9.

10. By letter dated December 30, 2008, Ohio EPA notified Respondent that it had failed to submit the 2006 and 2007 fee emission reports which were due June 6, 2008, in violation of OAC Rule 3745-78-02(D) and (G) and ORC § 3704.05(G).

11. On May 22, 2009, Respondent submitted the 2006 and 2007 fee emission reports abating the violations referenced in Finding No. 10.

12. 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 system at this GDF, checking for leaks, malfunctions or

damage to the system 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 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 each year. Copies of the weekly inspection records for August 1 through October 31 shall be submitted by November 14 of each 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 this GDF, prior to the beginning (during March) of each ozone season and during August of each ozone season. Respondent shall notify Ohio EPA of such testing within 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 ten thousand dollars ($10,000) in settlement of Ohio EPA's claims for civil penalties, which may be assessed pursuant to ORC Chapter 3704. Payment shall be made by official checks made payable to "Treasurer, State of Ohio" for eight thousand dollars ($8,000) of the total amount, which shall be paid in installments per the following schedule:

a. Within thirty (30) days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of five hundred dollars ($500);

b. Within one hundred and twenty (120) days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of two thousand five hundred dollars ($2,500); and

c. Within two hundred and ten (210) days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of two thousand five hundred dollars ($2,500); and

d. Within three hundred (300) days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of two thousand five hundred dollars ($2,500).

The official checks 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

4. In lieu of paying the remaining two thousand dollars ($2,000) of the civil penalty, Respondent shall, within thirty (30) days of the effective date of these Orders, fund a Supplemental Environmental Project ("SEP") by making a contribution in the amount of $2,000 to the Ohio EPA's Clean Diesel School Bus Program Fund (Fund 5CD0). Respondent shall tender an official check made payable to "Treasurer, State of Ohio" for $2,000. 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 $2,000 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 signed and submitted by Respondent to Ohio EPA.

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 EPA, Northeast District Office
2110 East Aurora Rd.
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

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.

IT IS SO ORDERED AND AGREED:

Ohio Environmental Protection Agency

Chris Korleski
Director

8/12/09
Date

IT IS SO AGREED:

Saif Kahn, d.b.a. Lakeland Citgo

Signature

8/06/2009
Date