OHIO E.P.A.
SEP 22 2009
ENTERED DIRECTOR'S JOURN

BEFORE THE OHIO

ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

Speedway SuperAmerica LLC
500 Speedway Drive
Enon, OH 45323

: 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: [signature] Date: 9-22-0

PREAMBLE

It is agreed by the parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to Speedway SuperAmerica LLC ("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 its 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

All of the findings necessary for the issuance of these Orders pursuant to ORC § 3704.03(R) and 3745.01 have been made and are outlined below. Nothing in the findings shall be considered to be an admission by Respondent of any matter of law or fact. The Director of Ohio EPA has determined the following findings:

1. Respondent owns and operates gasoline dispensing facilities ("GDFs") located at 712 North Leavitt Rd., Amherst, Lorain County, Ohio (Speedway #9975); 51 West Main Street, Amelia, Clermont County, Ohio (Speedway #1183); 12184 Mason

Road, Cincinnati, Hamilton County, Ohio (#5110) and 1161 North Ridge Rd., Lorain, Lorain County, Ohio (Speedway #3648). 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 Hamilton County and Clermont County for the administration of Ohio's air pollution rules and laws.

3. On March 31, 1999, Permit to Install ("PTI") 02-2783 was issued to Respondent for Speedway #9975. PTI 02-2783 requires Respondent to comply with the requirements for Stage II vapor control systems as specified in OAC Rule 3745-21-09(DDD).

4. On June 14, 2007, November 21, 2006 and February 18, 2009, Respondent submitted applications for and obtained permit-by-rules for Speedway #3648, Speedway #1183, and Speedway #5110 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.

5. 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 Rule 3745-21-09(DDD) was adopted by the Director pursuant to ORC Chapter 3704.

6. 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 a vapor control system is installed, operated, and maintained in accordance with the manufacturer's specifications and the applicable California Air Resources Board ("CARB") certification, and is free from defect.

7. 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).

8. 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.

9. 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 GDFs, 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.

SPEEDWAY #9975

10. On August 20, 2007, Ohio EPA conducted an inspection at this GDF to determine compliance with the Stage II annual static leak test, A/L ratio test and the five-year dynamic pressure performance test. The static leak test and dynamic pressure performance test passed; however, the A/L ratio test failed for dispensers 8 and 9. 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) while causing, allowing, or permitting the transfer of gasoline from a stationary storage tank into a motor vehicle are violations of PTI 02-2783, ORC § 3704.05(G) and OAC Rule 3745-21-09(DDD)(1)(c). A passing retest was conducted on September 27, 2007.

11. On July 15, 2008, Ohio EPA conducted an inspection at this GDF to determine compliance with the Stage II annual static leak and A/L ratio tests. The A/L ratio test passed while the static leak test failed. Respondent was transferring gasoline into motor vehicles prior to and after the failed 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 are violations of PTI 02-2783, ORC § 3704.05(G) and OAC Rule 3745-21-09(DDD)(1)(c).

12. On July 30, 2008, Respondent repaired the vapor control system and conducted a retest to determine compliance with OAC Rule 3745-21-09(DDD). The static leak test passed and Ohio EPA sent a return to compliance letter to Respondent on August 7, 2008.

SPEEDWAY #3648

13. On March 6, 2008, Ohio EPA conducted an inspection at this GDF to determine compliance with the Stage II annual static leak and A/L ratio tests. The A/L ratio test passed while the static leak test failed, most likely due to a large hole in the premium drop tube. Respondent was transferring gasoline into motor vehicles prior to and after the failed static leak 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 are violations of ORC § 3704.05(G) and OAC Rules 3745-21-09(DDD)(1)(b) and (c).

14. On May 2, 2008, a retest was attempted and the static leak test once again failed, most likely due to a large hole in the premium drop tube. Respondent was transferring gasoline into motor vehicles prior to and after the failed static leak test. 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) while causing, allowing, or permitting the transfer of gasoline from a stationary storage tank into a motor vehicle are violations of ORC § 3704.05(G) and OAC Rules 3745-21-09(DDD)(1)(b) and (c). In addition, Respondent's failure to complete a full successful passing static leak test within one year from the last test (February 8, 2007) was in violation of OAC Rule 3745-21-09(DDD)(2)(f) and ORC § 3704.05(G). By letter dated May 19, 2008, Ohio EPA notified Respondent of the violations of OAC Rule 3745-21-09(DDD).

15. On May 30, 2008, another retest was attempted and the static leak test once again failed, this time due to leaking vacuum pump motors. Respondent was transferring gasoline into motor vehicles prior to and after the failed static leak test. 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 are violations of ORC § 3704.05(G) and OAC Rules 3745-21-09(DDD)(1)(b) and (c).

16. By June 11, 2008, Respondent repaired the hole in the premium drop tube and the leaking vacuum pump motors. Another retest was attempted on June 11, 2008, and the static leak test passed. On June 23, 2008, a return to compliance letter was sent by Ohio EPA to Respondent.

17. On February 12, 2009, Ohio EPA conducted an inspection at this GDF to determine compliance with the Stage II annual static leak and A/L ratio tests. The A/L ratio test and static leak test both passed.

SPEEDWAY #1183

18. On January 26, 2009, HCDOES conducted an inspection at this GDF to determine compliance with the Stage II annual static leak and A/L ratio tests. The A/L ratio test passed while the static leak test failed. Respondent was transferring gasoline into motor vehicles prior to and after the failed static leak 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 are violations of ORC § 3704.05(G) and OAC Rules 3745-21-09(DDD)(1)(b) and (c).

19. On March 9, 2009, a retest was attempted and the static leak test once again failed. Respondent was transferring gasoline into motor vehicles prior to and after the failed static leak test. 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) while causing, allowing, or permitting the transfer of gasoline from a stationary storage tank into a motor vehicle are violations of ORC § 3704.05(G) and OAC Rules 3745-21-09(DDD)(1)(b) and (c). In addition, Respondent's failure to complete a full successful passing static leak test within one year from the last test (February 4, 2008) was in violation of OAC Rule 3745-21-09(DDD)(2)(f) and ORC § 3704.05(G). By April 16, 2009, Respondent made the necessary repairs and another retest was attempted on this date and the static leak test passed.

SPEEDWAY #5110

20. On June 26, 2008, Respondent conducted an annual Stage II compliance test at this GDF. The A/L ratio test failed. 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 are violations of ORC § 3704.05(G) and OAC Rule 3745-21-09(DDD)(1)(c). A passing retest was conducted on August 1, 2008.

21. On January 14, 2009, HCDOES conducted an inspection at this GDF to determine compliance with the Stage II annual static leak and A/L ratio tests. The static leak test failed, as well as the A/L ratio test for dispensers 6, 11 and 12. Respondent was transferring gasoline into motor vehicles prior to and after the failed 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 are violations of ORC § 3704.05(G) and OAC Rules 3745-21-09(DDD)(1)(b) and (c).

22. On April 14, 2009, a retest was attempted and the static leak test and the A/L ratio test for dispensers 6 and 11 passed; however, the A/L ratio test for dispenser 12 failed. Respondent was transferring gasoline into motor vehicles prior to and after the failed A/L ratio test for dispenser 12. 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) while causing, allowing, or permitting the transfer of gasoline from a stationary storage tank into a motor vehicle are violations of ORC § 3704.05(G) and OAC Rules 3745-21-09(DDD)(1)(b) and (c). By May 5, 2009, Respondent made the necessary repairs and another retest was attempted on this date and the A/L ratio test for dispenser 12 passed.

23. 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 Speedway #1183, Speedway #5110, Speedway #9975 and Speedway #3648, 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 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 Speedway #1183, Speedway #5110, Speedway #9975 and Speedway #3648, 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 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 thirty-five thousand eight hundred and eighty dollars ($35,880) 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 twenty-eight thousand seven hundred and four dollars ($28,704) 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 seven thousand one hundred and seventy-six dollars ($7,176) of the civil penalty, Respondent shall fund a Supplemental Environmental Project ("SEP") by making a contribution in the amount of $7,176 to Ohio EPA's Clean Diesel School Bus Program Fund (Fund 5CDO). 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 $7,176. The official check shall be submitted to Brenda Case, or her successor, together with a letter identifying the Respondent and Fund 5CDO, 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 $7,176 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 duly 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 EPA, Northeast District Office
2110 East Aurora Rd.
Twinsburg, Ohio 44087
Attn: Tim Fischer

and 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: Tom Kalman

or to such persons and addresses as may hereafter be otherwise specified in writing by Ohio EPA.

All documents required to be submitted by the Ohio EPA pursuant to these Orders shall be addressed to:

Speedway SuperAmerica LLC
500 Speedway Drive
Enon, Ohio 45323
Attn: Manager, Corporate Environmental

and to:

Speedway SuperAmerica LLC
500 Speedway Drive
Enon, Ohio 45323
Attn: Group Counsel

or to such persons and addresses as may hereafter be otherwise specified in writing by Respondent.

XI. RESERVATION OF RIGHTS

Ohio EPA and Respondent each reserve all rights, privileges, defenses 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

Date 9/18/09

IT IS SO AGREED:

Speedway SuperAmerica LLC

Signature

Date 9/14/09

Scott Hiser
Printed or Typed Name

Manager, Engineering Svcs.
Title

9/14/09