Ohio | Environmental Protection Agency
John R. Kasich, Governor
Mary Taylor, Lt. Governor
Scott J. Nally, Director

May 2, 2012

CERTIFIED MAIL

Mr. James A. Lucas, Sr.
President
Lucas Enterprises, Inc.
14005 Madison Avenue
Lakewood, Ohio 44107

Re: Final Findings and Orders for:
Stage II Vapor control system rule violations associated with the gasoline dispensing facility located at 14005 Madison Avenue in Lakewood, Ohio

Dear Mr. Lucas:

Transmitted herewith are the Final Findings and Orders ("Orders") of the Director of Ohio EPA concerning the above-referenced matter.

Please note that the effective date of the Orders is the date that the Orders were entered into the Ohio EPA Director's journal, which is the date that is stamped on the first page of the Orders.

Sincerely,

Bruce D. Weinberg
Environmental Manager
Enforcement Section
Division of Air Pollution Control

BDW/lt

xc: Carol Hester, PIC
Lee Tullis, DAPC
Akia Smith, Fiscal Office (Agency # 13)
Stephen Feldmann, Legal Office
Tom Kalman, DAPC
Jim Kavalec, DAPC
Linda Kimmy / Bryan Sokolowski, CDAQ
John Paulian, DAPC

50 West Town Street, Suite 700
P.O. Box 1049
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OHIO E.P.A.
MAY -2 2012
ENTERED DIRECTOR'S JOURNAL

BEFORE THE

OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

Lucas Enterprises, Inc.	:	**Director's Final Findings**
14005 Madison Avenue	:	**and Orders**
Lakewood, Ohio 44107	:	

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: 5-2-12

PREAMBLE

It is agreed by the parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to Lucas Enterprises, Inc. ("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 rules 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 14005 Madison Avenue, Lakewood, Cuyahoga County, Ohio (Facility ID # 1318286223). On July 20, 2011, and pursuant to Ohio Administrative Code ("OAC") Rule 3745-31-03(A)(4), Respondent submitted a permit-by-rule ("PBR") notification form to the Cleveland Division of Air Quality ("CDAQ") for this GDF. This GDF is subject to the requirements of OAC Rule 3745-21-09(DDD) concerning Stage II vapor control systems.

2. CDAQ is the contractual agent for Ohio EPA in Cuyahoga 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. OAC Rule 3745-21-09(DDD) was adopted by the Director pursuant to ORC Chapter 3704.

4. OAC Rule 3745-21-09(DDD)(1)(b) states, in part, that no owner or operator of a subject 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.

5. OAC Rule 3745-21-09(DDD)(1)(c) states, in part, that no owner or operator of a subject 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. On September 2, 2009, Respondent conducted the Stage II compliance tests at this GDF. During the September 2, 2009 Stage II compliance tests, the static leak test passed while the A/L ratio test failed for dispenser 5 due to a low vacuum. Respondent was transferring gasoline into motor vehicles 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 were violations of ORC § 3704.05(G) and OAC Rule 3745-21-09(DDD)(1)(b) and (c). On April 26, 2010, Respondent conducted and passed an A/L ratio retest for dispenser 5.

7. On June 28, 2011, CDAQ conducted an inspection at this GDF and determined that Respondent had failed to conduct the 2010 annual Stage II compliance tests, in violation of ORC § 3704.05(G) and OAC Rule 3745-21-09(DDD)(2)(f). By letter dated July 11, 2011, CDAQ notified Respondent of the aforementioned violations.

8. On July 20, 2011, Respondent conducted the 2011 Stage II compliance tests at this GDF. During the July 20, 2011 Stage II compliance tests, the static leak test passed while the A/L ratio test failed for dispenser 5. Respondent was transferring gasoline into motor vehicles 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 were violations of ORC § 3704.05(G) and OAC Rule 3745-21-09(DDD)(1)(c). On August 24, 2011, Respondent conducted and passed an A/L ratio retest for dispenser 5. By letters dated August 9 and September 20, 2011, CDAQ notified Respondent of these violations.

9. 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 eight thousand dollars ($8,000) 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 six thousand and four hundred dollars ($6,400) of the total amount, which shall be paid in installments per the following schedule:

a. Within sixty (60) days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of eight hundred dollars ($800);

b. Within ninety (90) days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of eight hundred dollars ($800);

c. Within one hundred and twenty (120) days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of eight hundred dollars ($800);

d. Within one hundred and fifty (150) days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of eight hundred dollars ($800);

e. Within one hundred and eighty (180) days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of eight hundred dollars ($800);

f. Within two hundred and ten (210) days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of eight hundred dollars ($800);

g. Within two hundred and forty (240) days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of eight hundred dollars ($800); and

h. Within two hundred and seventy (270) days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of eight hundred dollars ($800).

The official checks shall be submitted to Akia Smith, 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

2. In lieu of paying the remaining one thousand and six hundred dollars ($1,600) of the civil penalty, Respondent shall fund a Supplemental Environmental Project ("SEP") by making a contribution in the amount of $1,600 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 $1,600. The official check shall be submitted to Akia Smith, or her successor, together with a letter identifying the Respondent and Fund 5CD0, to the above-stated address.

3. A copy of each of the above checks shall be sent to Thomas Kalman, Acting 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

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 $1,600 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:

Cleveland Division of Air Quality
75 Erieview Plaza, Suite 200
Cleveland, Ohio 44114
Attn: Linda Kimmy

and to:

Ohio Environmental Protection Agency
Lazarus Government Center
Division of Air Pollution Control
50 West Town Street, Suite 700
P.O. Box 1049
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.

ORDERED AND AGREED:

Ohio Environmental Protection Agency

Scott J. Nally
Director

4/30/12
Date

AGREED:

Lucas Enterprises, Inc.

James A. Lucas Sr.
Signature

4/12/12
Date

JAMES A. LUCAS SR.
Printed or Typed Name

PRESIDENT
Title