



**Environmental  
Protection Agency**

John R. Kasich, **Governor**  
Mary Taylor, **Lt. Governor**  
Scott J. Nally, **Director**

December 29, 2011

**CERTIFIED MAIL**

Mayor Gary Norton, Jr.  
City of East Cleveland  
14340 Euclid Avenue  
East Cleveland, Ohio 44112

Re: Final Findings and Orders for: violations  
of OAC Rule 3745-26-12 (A)(2)  
concerning government fleet vehicle  
inspection and reporting requirements by  
the City of East Cleveland, Ohio

Dear Mayor Norton:

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,

Thomas J. Kalman, P.E.  
Acting Assistant Chief, SIP Development and Enforcement  
Division of Air Pollution Control

TJK/ef

xc: Carol Hester, PIC  
Erica Fetty, DAPC  
Brenda Case, Fiscal Office (Agency # NA)  
Donald L. Vanterpool, Legal Office  
Phil Ritz, DAPC  
John Paulian, DAPC

BEFORE THE  
OHIO ENVIRONMENTAL PROTECTION AGENCY

OHIO E.P.A.

DEC 29 2011

ENTERED DIRECTOR'S JOURNAL

In the Matter of:

|                            |   |                                  |
|----------------------------|---|----------------------------------|
| City of East Cleveland     | : | <u>Director's Final Findings</u> |
| 14340 Euclid Avenue        | : | <u>and Orders</u>                |
| East Cleveland, Ohio 44112 | : |                                  |

**PREAMBLE**

It is agreed by the parties hereto as follows:

**I. JURISDICTION**

These Director's Final Findings and Orders ("Orders") are issued to the City of East Cleveland ("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**

These Orders shall apply to and be binding upon Respondent and successors in interest liable under Ohio law.

**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.

**V. FINDINGS**

All of the findings necessary for the issuance of these Orders pursuant to ORC §§ 3704.03 and 3704.01 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 is a government entity with offices located at 14340 Euclid Avenue, East Cleveland, in Cuyahoga County, Ohio, a County that was designated as a nonattainment area for ozone until September 15, 2009, and is part of a designated program area that is subject to an enhanced or opt-in enhanced vehicle inspection and maintenance program. Respondent owns or leases and operates a fleet of motor vehicles,

as defined in ORC §§ 4501.01(B), 4503.16, and 4511.01(C), in this County, which are subject to biennial vehicle emissions inspections required pursuant to ORC § 3704.14 and Ohio Administrative Code ("OAC") Rule 3745-26-12(A)(2).

2. OAC Rule 3745-26-01(AA) defines a "nonattainment area" as an area that has not achieved the National Ambient Air Quality Standards and that is required to undergo certain air pollution control strategies pursuant to the 1990 Clean Air Act Amendments.

3. OAC Rule 3745-26-01(H) defines a "designated program area" to include any county currently or formerly classified as moderate, serious, severe, or extreme nonattainment for carbon monoxide or ozone in accordance with the Clean Air Act Amendments of 1990 and that is subject to a basic, an enhanced, or an opt-in enhanced vehicle inspection and maintenance program.

4. OAC Rule 3745-26-12(A)(2) states, in part, that, unless otherwise exempt, each motor vehicle that is owned or leased by the State, local government, or any political subdivision whose office is located within a county that is part of a designated program area, is subject to inspection in odd numbered years and shall report the inspection results to the Director by December 31 of that year.

5. ORC § 3704.14(D) states, in part, that the Director may continue to implement and enforce rules pertaining to the motor vehicle inspection and maintenance program previously implemented under former ORC § 3704.14 as that section existed prior to its repeal and reenactment by Amended Substitute House Bill 66 of the 126th General Assembly.

6. OAC Rules 3745-26-01 and 3745-26-12, among others, are rules pertaining to the enhanced motor vehicle inspection and maintenance program previously implemented under former ORC § 3704.14 as that section existed prior to its repeal and reenactment by Amended Substitute House Bill 66 of the 126<sup>th</sup> General Assembly. Former ORC § 3704.14(H) stated, in part, that the federal government, the State, any political subdivision, and any agency or instrumentality of those entities, in accordance with rules adopted by the Director, shall have inspected any motor vehicles that they own and operate in any county that is subject to the vehicle inspection and maintenance program.

7. Per OAC Rule 3745-26-12(A)(2), Respondent was required to have each of its vehicles inspected during 2009 and to report the results to Ohio EPA no later than December 31, 2009.

8. In a letter dated February 9, 2009, Ohio EPA notified Respondent of its obligation to comply with the requirements of OAC Rule 3745-26-12(A)(2). Included with this letter were directions to the Ohio EPA website location to obtain a copy of the Government Fleet Reporting form, with instructions.

9. In a letter dated July 16, 2009, Ohio EPA reminded Respondent of the government fleet testing and reporting requirements. This reminder letter included an example Government Fleet Reporting form, with approved valid exemption codes and instructions.
10. In a letter dated October 30, 2009, Ohio EPA again reminded Respondent of the government fleet testing and reporting requirements. This reminder letter also included an example Government Fleet Reporting form, with approved valid exemption codes and instructions.
11. In a letter dated December 4, 2009, Ohio EPA again informed Respondent of its obligation to comply with the requirements of OAC Rule 3745-26-12(A)(2). At that time, Ohio EPA notified Respondent that the deadline for complying with the testing and reporting requirements was being extended to March 31, 2010. A copy of the Government Fleet Reporting form, with instructions, was also included with the letter.
12. Respondent did not submit a complete Government Fleet Reporting form that included test results for all of the vehicles registered to it to Ohio EPA on or before December 31, 2009, in violation of OAC Rule 3745-26-12(A)(2).
13. In a letter dated February 23, 2010, Ohio EPA again informed Respondent of its obligation to comply with the requirements of OAC Rule 3745-26-12(A)(2). At that time, Ohio EPA notified Respondent that the deadline for complying with the testing and reporting requirements was being extended to March 31, 2010. A copy of the Government Fleet Reporting form, with instructions, was also included with the letter.
14. Respondent did not submit a complete Government Fleet Reporting form to Ohio EPA on or before March 31, 2010.
15. On May 6, 2010, Ohio EPA sent a warning letter to Respondent by certified mail. In this letter, Ohio EPA informed Respondent of its noncompliance with the requirements of OAC Rule 3745-26-12(A)(2) and extended the deadline for complying with the testing and reporting requirements to June 4, 2010. A copy of the Government Fleet Reporting form, with instructions, was again included with the letter.
16. Respondent did not submit a complete Government Fleet Reporting form to Ohio EPA on or before June 4, 2010.
17. Respondent submitted an incomplete Government Fleet Reporting form for calendar year 2009 to Ohio EPA on January 22, 2010. The report indicated that Respondent did not have each motor vehicle that was subject to inspection in calendar year 2009 inspected before December 31, 2009, and did not submit a complete Government Fleet Reporting form for calendar year 2009 to Ohio EPA on or before December 31, 2009.

18. Based on the above Findings, the Director of Ohio EPA finds that Respondent violated OAC Rule 3745-26-12(A)(2), for failing to have each motor vehicle that was subject to inspection in calendar year 2009 inspected before December 31, 2009, and for failing to report the inspection results to Ohio EPA by December 31, 2009.

19. 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 Chapter 3745-26 was adopted by the Director pursuant to ORC Chapter 3704.

20. ORC § 3704.06(C) provides, in part, that any person violating ORC § 3704.05 shall pay a civil penalty of not more than twenty-five thousand dollars (\$25,000) for each day of each violation. Therefore, failure to comply with these Orders could subject the Respondent to a civil penalty of up to \$25,000 per day per violation.

21. Should Respondent fail to comply with these Orders, the Director of Ohio EPA may refer this matter to the Ohio Attorney General's Office where, pursuant to ORC § 3704.06, the Director may request that the Attorney General pursue litigation and seek civil penalties of up to \$25,000 per day of violation.

22. 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 comply with the requirements of OAC Rule 3745-26-12(A)(2), by having each motor vehicle that is subject to inspection in calendar year 2011 inspected before December 31, 2011, and report the inspection results to Ohio EPA by December 31, 2011.

2. Respondent shall pay the amount of five hundred dollars (\$500) 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 check made payable to "Treasurer, State of Ohio" for five hundred dollars (\$500) within 30 days of the effective date of these Orders. 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. A copy of the check shall be sent to Thomas J. 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

## **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.

## **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 Respondent's activities.

## **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  
Lazarus Government Center  
Division of Air Pollution Control  
50 West Town Street, Suite 700, P.O. Box 1049  
Columbus, Ohio 43216-1049

Attention: John Paulian  
Supervisor, Compliance Monitoring Section  
and  
Phil Ritz  
Mobile Sources 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 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**

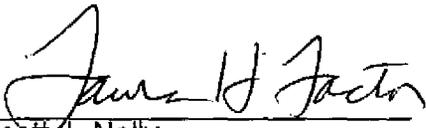
The effective date of these Orders is the date these Orders are entered into the Ohio EPA Director's journal.

**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:**

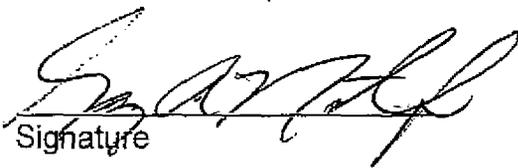
Ohio Environmental Protection Agency

  
\_\_\_\_\_  
Scott J. Nally  
Director

12-27-11  
Date

**AGREED:**

City of East Cleveland

  
\_\_\_\_\_  
Signature

12/21/11  
Date

\_\_\_\_\_  
Printed or Typed Name

\_\_\_\_\_  
Title