OHIO E.P.A.

APR 25 2012

ENTERED DIRECTOR'S JOURNAL

BEFORE THE

OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

Turney Road Center, LLC.	:	Director's Final Findings
d.b.a. Sunoco Hop-In	:	and Orders
700 Turney Road	:	
Bedford, Ohio 44146	:	
	:	
and	:	
	:	
Mayfield Road Center, LLC.	:	
d.b.a. Sunoco Hop-In	:	
5332 Mayfield Road	:	
Lyndhurst, Ohio 44124	:	

PREAMBLE

It is agreed by the parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to Turney Road Center, LLC., d.b.a. Sunoco Hop-In; and Mayfield Road Center, LLC., d.b.a. Sunoco Hop-In ("Respondents") 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 Respondents and successors in interest liable under Ohio law. No change in ownership of the Respondents or of the facilities (as hereinafter defined) shall in any way alter Respondents' 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. Respondents own and operate gasoline dispensing facilities ("GDFs") located at 700 Turney Road, in Bedford, Cuyahoga County, Ohio (Facility ID# 1318036190) and 5332 Mayfield Road, in Lyndhurst, Cuyahoga County, Ohio (Facility ID# 1318306226). These GDFs are subject to the requirements of Ohio Administrative Code ("OAC") Rule 3745-21-09(DDD) concerning Stage II vapor control systems.

2. The Cleveland Division of Air Quality ("CDAQ") is the contractual agent for Ohio EPA in Cuyahoga County for the administration of Ohio's air pollution control 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. 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.

7. 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 OAC Rule 3745-21-09(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.

Turney Road Center, LLC., d.b.a. Sunoco Hop-In

8. On or about November 27, 2009, Respondent Turney Road Center, LLC. purchased the GDF located at 700 Turney Road in Bedford, Ohio, and submitted a permit-by-rule ("PBR") ownership change notification to CDAQ for this GDF.

9. On June 16, 2010, Respondent Turney Road Center, LLC. conducted the Stage II compliance tests at this GDF. During the June 16, 2010, Stage II compliance tests, the dynamic pressure performance test and static leak test passed while the A/L ratio failed for dispenser 7. Respondent Turney Road Center, LLC. 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). By letter dated June 17, 2010, CDAQ notified Respondent Turney Road Center, LLC. of the aforementioned violations. On July 26, 2010, Respondent Turney Road Center, LLC. conducted and passed an A/L ratio retest for dispenser 7.

10. On June 1, 2011, Respondent Turney Road Center, LLC. conducted the 2011 Stage II compliance tests at this GDF. During the June 1, 2011 Stage II compliance tests, the static leak test passed while the A/L ratio test failed on dispenser 10. Respondent Turney Road Center, LLC. 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 are violations of ORC § 3704.05(G) and OAC Rule 3745-21-09(DDD)(1)(c). By letters dated June 22 and August 11, 2011, CDAQ notified Respondent Turney Road Center, LLC. of the aforementioned violations. On June 30, 2011, Respondent Turney Road Center, LLC. conducted and passed an A/L ratio retest for dispenser 10.

Mayfield Road Center, LLC., d.b.a. Sunoco Hop-In

11. On or about November 27, 2009, Respondent Mayfield Road Center, LLC. purchased the GDF located at 5332 Mayfield Road in Lyndhurst, Ohio, and submitted a permit-by-rule ("PBR") ownership change notification to CDAQ for this GDF.

12. On June 17, 2010, Respondent Mayfield Road Center, LLC. conducted the Stage II compliance tests at this GDF. During the June 17, 2010 Stage II compliance tests, the A/L ratio and static leak tests passed while the dynamic pressure performance test failed. Respondent Mayfield Road Center, LLC. was transferring gasoline into motor vehicles prior to and after the failed dynamic pressure performance 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). In addition, Respondent Mayfield Road Center, LLC. failed to maintain records demonstrating proof of attendance and completion of

training required by Ohio EPA for the operator or local manager of the GDF, in violation of OAC Rule 3745-21-09(DDD)(3)(a)(vi) and ORC § 3704.05(G). By letter dated June 18, 2010, CDAQ notified Respondent Mayfield Road Center, LLC. of the aforementioned violations. On July 21, 2010, Respondent Mayfield Road Center, LLC. conducted and passed a dynamic pressure performance retest. On August 11, 2010, Respondent Mayfield Road Center, LLC. provided CDAQ with a training certificate for the local manager of this GDF.

13. On June 1, 2011, Respondent Mayfield Road Center, LLC. conducted the 2011 Stage II compliance tests at this GDF. During the June 1, 2011 Stage II compliance tests, the static leak test passed while the A/L ratio test failed on dispenser 7. Respondent Mayfield Road Center, LLC. 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 are violations of ORC § 3704.05(G) and OAC Rule 3745-21-09(DDD)(1)(c). By letter dated June 17 and August 2, 2011, CDAQ notified Respondent Mayfield Road Center, LLC. of the aforementioned violations. On June 30, 2011, Respondent Mayfield Road Center, LLC. conducted and passed an A/L ratio retest for dispenser 7.

14. On October 18, 2011, CDAQ conducted an inspection at this GDF and determined that this GDF was not operating. One dispenser had been removed and all the hoses had been removed from the pumps.

15. 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. If Respondent Mayfield Road Center, LLC. restarts the gasoline dispensing operations at the 5332 Mayfield Road GDF, Respondent Mayfield Road Center, LLC. shall demonstrate, within thirty (30) days of beginning the gasoline dispensing operations, that the Stage II vapor control system is operating properly by conducting and passing dynamic pressure performance, static leak, and A/L ratio tests. Respondent Mayfield Road Center, LLC. shall notify CDAQ of such testing at least fourteen (14) days prior to any test. The results of these tests shall be submitted to CDAQ within fourteen (14) days after completion of the tests.

2. For the next two ozone-producing seasons (i.e., April 1, 2012 – October 31, 2012 and April 1, 2013 – October 31, 2013), i.e., by May 15, 2012 and March 15, 2013, and continuing until October 31, 2012 and October 31, 2013, respectively, Respondent Turney Road Center, LLC. shall conduct weekly inspections of the Stage II vapor control system at the Turney Road Center GDF, checking for leaks, malfunctions or other 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 CDAQ during the middle and at the end of each ozone-producing season. Specifically, copies of the weekly inspection records for the period from May 15, 2012 through July 31, 2012, and from March 15, 2013 through July 31, 2013, 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.

3. For the next two ozone-producing seasons (i.e., April 1, 2012 – October 31, 2012 and April 1, 2013 – October 31, 2013), Respondent Turney Road Center, LLC. shall perform static leak and A/L ratio tests at the Turney Road Center GDF by May 15, 2012, and prior to the beginning (during March) of the 2013 ozone-producing season and during August of each ozone-producing season. Respondent Turney Road Center, LLC. shall notify CDAQ of such testing at least fourteen (14) days prior to any test. The results of these tests shall be submitted to CDAQ within fourteen (14) days after completion of the tests.

4. Respondents 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. 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 six thousand and four hundred dollars ($6,400) of the total amount. The official check shall be submitted to Akia Smith, or her successor, together with a letter identifying the Respondents, to:

Ohio EPA
Office of Fiscal Administration
50 West Town Street, Suite 700
P.O. Box 1049
Columbus, Ohio 43216-1049

5. In lieu of paying the remaining one thousand six hundred dollars ($1,600) of the civil penalty, Respondents 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). Respondents 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 Respondents and Fund 5CD0, to the above-stated address.

6. 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

7. Should Respondents fail to fund the SEP within the required time frame set forth in Order 5, Respondents shall immediately pay to Ohio EPA $1,600 of the civil penalty in accordance with the procedures in Order 4.

VI. TERMINATION

Respondents' obligations under these Orders shall terminate when Respondents certify in writing and demonstrate to the satisfaction of Ohio EPA that Respondents have 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 Respondents of the obligations that have not been performed, in which case Respondents 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 Respondents to Ohio EPA and shall be signed by a responsible official of Respondents. 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 Respondents' 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 Respondents.

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 Respondents 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 Respondents 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, Respondents consent to the issuance of these Orders and agree to comply with these Orders. Compliance with these Orders shall be a full accord and satisfaction for Respondents' liability for the violations specifically cited herein.

Respondents hereby waive the right to appeal the issuance, terms and conditions, and service of these Orders, and Respondents hereby waive any and all rights Respondents may have to seek administrative or judicial review of these Orders either in law or equity.

Notwithstanding the preceding, Ohio EPA and Respondents agree that if these Orders are appealed by any other party to the Environmental Review Appeals Commission, or any court, Respondents retain the right to intervene and participate in such appeal. In such an event, Respondents 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

4/17/12
Date

AGREED:

Turney Road Center, LLC., d.b.a. Sunoco Hop-In

Signature

4/11/12
Date

Scott A. Moon
Printed or Typed Name

MANAGER
Title

Mayfield Road Center, LLC., d.b.a. Sunoco Hop-In

Signature

4/11/12
Date

Scott A. Moon
Printed or Typed Name

MANAGER
Title