

JUN 25 2012

ENTERED DIRECTOR'S JOURNAL

BEFORE THE

OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

Spremulli Brothers Auto Service, Inc. : Director's Final Findings
19548 Detroit Road : and Orders
Rocky River, Ohio 44116 :

PREAMBLE

It is agreed by the parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to Spremulli Brothers Auto Service, 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 19548 Detroit Road, Rocky River, Cuyahoga County, Ohio (Facility ID # 1318508703). This GDF has been operating since 1986. On September 1, 2010 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. OAC Rule 3745-21-09(DDD)(2)(a) states, in part, that within sixty days after the installation or modification of a vapor control system, the owner or operator of the GDF shall perform and comply with the requirements of a leak test and dynamic pressure performance test.

7. OAC Rule 3745-21-09(DDD)(2)(d) states, in part, that at intervals not to exceed five years, the owner or operator of the GDF shall repeat and demonstrate compliance with the requirements of the tests specified in paragraph (DDD)(2).

8. 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 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.

9. OAC Rule 3745-21-09(DDD)(3)(a)(i) through (vi) and (b) states, in part, that any owner or operator of a gasoline dispensing facility subject to the requirements of paragraph (DDD)(1) shall maintain records of the quantity of gasoline delivered to the facility during each calendar month; the results of any Stage II tests performed; a log of the date and description of all repair and maintenance work performed on the vapor control system; copies of the most recent operating permit application and operating permit issued by Ohio EPA for the GDF; and documentation demonstrating proof of attendance and completion of training required by Ohio EPA for the operator or local manager of the GDF. All records shall be retained for a period of not less than three years.

10. On September 1, 2010, CDAQ conducted an inspection at this GDF and determined that at some point in 2001 Respondent had installed a Stage II vapor control system at this GDF. Respondent failed to conduct a static leak test and a dynamic pressure performance test within sixty days of installing the Stage II vapor control system, in violation of OAC Rule 3745-21-09(DDD)(2)(a) and ORC § 3704.05(G). In addition, Respondent failed to conduct annual Stage II compliance tests since the installation of the Stage II vapor control system, failed to conduct the five-year dynamic pressure performance test, failed to maintain maintenance records for three years, and failed to demonstrate proof of attendance and completion of training required by Ohio EPA for the operator or local manager of this GDF, in violation of OAC Rules 3745-21-09(DDD)(1)(c), 3745-21-09(DDD)(2)(d), 3745-21-09(DDD)(2)(f), 3745-21-09(DDD)(3)(a)(iii) and (vi), and 3745-21-09(DDD)(3)(b), and ORC § 3704.05(G). Also, from at least 2001, when Respondent installed the Stage II vapor control system, until September 1, 2010, Respondent failed to submit a permit-to-install and operate application or Permit-by-Rule ("PBR") notification form as identified in OAC Chapter 3745-31 to Ohio EPA, in violation of OAC Rules 3745-31-02, former 3745-35-02, and ORC § 3704.05(G). On September 1, 2010, Respondent submitted, to Ohio EPA, a PBR notification form for this GDF. By letter dated September 16, 2010, CDAQ notified Respondent of these violations.

11. On October 29, 2010, Respondent conducted and passed the 2010 annual Stage II compliance tests and five-year dynamic pressure performance test at this GDF. In addition, Respondent was maintaining records as required by OAC Rule 3745-21-09(DDD)(3)(a)(i) through (vi). On November 4, 2010, Respondent demonstrated proof of attendance and completion of the training required in accordance with OAC Rule 3745-21-09(DDD)(3)(a)(vi).

12. On September 23, 2011, Respondent conducted and passed the 2011 annual Stage II compliance tests.

13. 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 thirteen thousand and five hundred dollars (\$13,500) 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 checks made payable to "Treasurer, State of Ohio" for ten thousand and eight hundred dollars (\$10,800) of the total amount, which shall be paid in installments per the following schedule:

a. Within ninety (90) days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of two thousand and seven hundred dollars (\$2,700):

b. Within one hundred and eighty (180) days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of two thousand and seven hundred dollars (\$2,700):

c. Within two hundred and seventy (270) days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of two thousand and seven hundred dollars (\$2,700); and

d. Within three hundred and sixty (360) days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of two thousand and seven hundred dollars (\$2,700).

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 two thousand and seven hundred dollars (\$2,700) of the civil penalty, Respondent shall fund a Supplemental Environmental Project ("SEP") by making a contribution in the amount of \$2,700 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 \$2,700. 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 Bruce Weinberg, Environmental Manager, Enforcement Section, or his successor, at the following address:

Ohio EPA
Division of Air Pollution Control
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 \$2,700 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: Bruce Weinberg

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

Date

AGREED:

Spremulli Brothers Auto Service, Inc.

Francesco Spremulli

Signature

6-14-12

Date

FRANCESCO SPREMULLI

Printed or Typed Name

Vice Pres

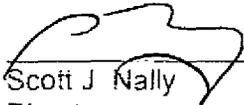
Title

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Ohio Environmental Protection Agency



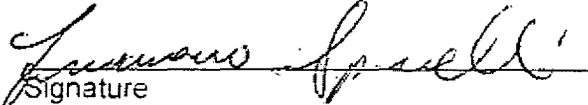
Scott J Nally
Director

6/19/12

Date

AGREED:

Spremulli Brothers Auto Service, Inc.



Signature

6-14-12

Date

FRANCESCO SPREULLI

Printed or Typed Name

Vice Pres

Title