

OHIO E.P.A.

JUL 30 2013

BEFORE THE

ENTERED DIRECTOR'S JOURNAL

OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of: \_\_\_\_\_

**Angel Petroleum, LLC.** : **Director's Final Findings**  
**22492 Brookpark Road** : **and Orders**  
**Fairview Park, Ohio 44126** :

### PREAMBLE

It is agreed by the parties hereto as follows:

#### I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to Angel Petroleum, 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 successors in interest liable under Ohio law. No change in ownership of 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 the gasoline dispensing facility ("GDF") located at 22492 Brookpark Road, Fairview Park, Cuyahoga County, Ohio (Facility ID# 1318218702). Respondent acquired this GDF in 2010. This GDF is 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 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 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.

7. On July 25, 2011, Respondent conducted and passed the annual Stage II compliance tests at this GDF. Respondent failed to conduct the 2012 annual Stage II compliance tests by July 25, 2012, one year from the last passing tests, in violation of ORC § 3704.05(G) and OAC Rules 3745-21-09(DDD)(1)(c) and (2)(f). By letter dated September 14, 2012, CDAQ notified Respondent that it had failed to conduct the 2012 annual Stage II compliance tests within one year from the last passing test.

8. On October 2, 2012, Respondent conducted and failed the annual static leak test at this GDF due to a leak in the drop tube. The A/L ratio test was not conducted at this time. 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 were violations of ORC § 3704.05(G) and OAC Rules 3745-21-09(DDD)(1)(b) and (c). By letter dated November 9, 2012, CDAQ notified Respondent of the aforementioned violations.

9. On November 29, 2012, Respondent attempted to conduct a static leak retest at this GDF but could not due to a leak in the system. The A/L ratio test was conducted and dispensers 5 and 6 failed due to a malfunctioning vacuum assist board. Respondent was transferring gasoline into motor vehicles prior to and after the failed

A/L ratio 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 were violations of ORC § 3704.05(G), and OAC Rule 3745-21-09(DDD)(1)(b) and (c). By letter dated November 30, 2012, CDAQ notified Respondent of the aforementioned violations.

10. On January 3, 2013, CDAQ spoke with Respondent who indicated that all repairs had been made and testing was being scheduled. On May 22, 2013, Respondent conducted static leak and A/L ratio retests at this GDF. The static leak test passed and the A/L ratio test passed for all dispensers except one. On June 27, 2013, Respondent passed an A/L ratio retest on the one dispenser.

11. 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 three thousand dollars (\$3,000) 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," 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 three hundred dollars (\$300);
  - b. Within ninety (90) days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of three hundred dollars (\$300);
  - c. Within one hundred and twenty (120) days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of three hundred dollars (\$300);
  - d. Within one hundred and fifty (150) days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of three hundred dollars (\$300);
  - e. Within one hundred and eighty (180) days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of three hundred dollars (\$300);

f. Within two hundred and ten (210) days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of three hundred dollars (\$300);

g. Within two hundred and forty (240) days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of three hundred dollars (\$300);

h. Within two hundred and seventy (270) days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of three hundred dollars (\$300);

i. Within three hundred (300) days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of three hundred dollars (\$300); and

j. Within three hundred and thirty (330) days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of three hundred dollars (\$300).

The official checks shall be submitted to Carol Butler, 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. 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  
50 West Town Street, Suite 700  
P.O. Box 1049  
Columbus, Ohio 43216-1049

## **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 agrees 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**

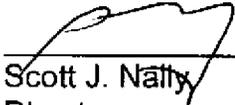
The effective date of these Orders is the date these Orders are entered into the Ohio EPA Director's journal.

**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:**

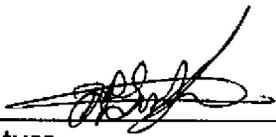
**Ohio Environmental Protection Agency**

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

2/26/13  
\_\_\_\_\_  
Date

**AGREED:**

**Angel Petroleum, LLC.**

  
\_\_\_\_\_  
Signature

7/18/13  
\_\_\_\_\_  
Date

DAVINDER P SINGH  
\_\_\_\_\_  
Printed or Typed Name

President  
\_\_\_\_\_  
Title