

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

BP Products North America Inc.	:	<u>Director's Final Findings</u>
411 West Fullerton Parkway	:	<u>and Orders</u>
Suite 1702W	:	
Chicago, Illinois 60614	:	

OHIO E.P.A.
SEP 14 2005
ENTERED DIRECTOR'S JOURNAL

PREAMBLE

It is agreed by the parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to BP Products North America 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 Respondent or of the facilities (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 meanings as used in ORC Chapter 3704 and the regulations promulgated thereunder.

IV. FINDINGS

The Director of Ohio EPA has determined the following findings:

1. The City of Cleveland, Division of Air Quality ("CDAQ") acts as an agent of Ohio EPA for the Division of Air Pollution Control in Cuyahoga County.

2. Respondent operates a number of commercial gasoline dispensing facilities ("GDFs") in Cuyahoga County. Each of these GDFs are air contaminant sources and subject to the permit requirements of the Ohio Administrative Code ("OAC") Chapters 3745-31 and 3745-35.

3. From March 25, 2003 to August 18, 2004, CDAQ conducted inspections of thirty-seven of Respondent's GDFs in Cuyahoga County. CDAQ discovered the following violations at these facilities:

- a. Respondent had installed or modified seventeen GDFs after January 1, 1974 and failed to obtain a permit-to-install ("PTI") for each of these facilities, in violation of OAC Rule 3745-31-02(A)(1) and ORC § 3704.05(G); and
- b. Respondent had failed to obtain a permit-to-operate ("PTO") or had failed to renew a PTO for twenty-eight of the facilities, in violation of OAC Rule 3745-35-02(A).

The facilities involved in these violations are identified in the following table:

BP #	Ohio EPA Premise #	Address	Installed	Failure to Obtain PTI	PTO expired	Failure to Obtain PTO
22365	1318006889	9308 Chester Ave., Cleveland	1/74	✓	10/15/03	✓
28956	1318006902	5510 St. Clair Ave., Cleveland	na		10/15/03	✓
27368	1318006917	7006 Fleet Ave., Cleveland	1/88		10/15/03	✓
22366	1318006921	4006 Lee Rd., Cleveland	1/85		12/3/03	✓
22445	1318006923	3065 West 117th St., Cleveland	6/77	✓	na	
22374	1318006926	10202 Lorain Ave., Cleveland	11/91	✓	na	
27823	1318006930	10933 Superior Ave., Cleveland	1/98	✓	10/15/03	✓
22360	1318006935	3100 West 14th St., Cleveland	6/82	✓	na	
22376	1318006936	4161 West 150 th St., Cleveland	na		10/22/03	✓
22232	1318007402	14008 Lorain Ave., Cleveland	na		10/15/03	✓
22225	1318007430	2535 Superior Ave., Cleveland	na		6/25/03	✓
22359	1318007572	3735 Fulton Rd., Cleveland	na		10/15/03	✓
22352	1318036938	1483 Broadway Ave., Bedford	na		10/15/03	✓
22531	1318037574	120 Broadway Ave., Bedford	na		10/15/03	✓
22357	1318096946	4774 Royalton Rd., Broadview Hts.	na		10/15/03	✓
22449	1318106948	4260 Ridge Rd., Brooklyn	6/82	✓	10/15/03	✓
26491	1318127248	15150 Snow Rd., Brook Park	1/85	✓	na	
26352	1318136950	20 E. Washington St., Chagrin Falls	6/85	✓	10/15/03	✓
22456	1318166956	3983 Mayfield Rd., Cleveland	1/88	✓	10/15/03	✓
22451	1318226967	11250 Granger Road, Garfield Hts.	1/82	✓	na	
22387	1318276971	5200 Rockside Rd., Independence	1/87	✓	10/15/03	✓
22452	1318286978	14718 Madison Ave., Lakewood	1/98	✓	10/08/03	✓

BP #	Ohio EPA Premise #	Address	Installed	Failure to Obtain PTI	PTO expired	Failure to Obtain PTO
22390	1318336983	6680 Mayfield Rd., Mayfield Hts.	na		10/22/03	✓
22394	1318366987	4910 Harvard Ave., Newburg Hts.	na		4/1/04	✓
22402	1318376989	23425 Lorain Ave., North Olmsted	6/84		12/3/03	✓
22197	1318397986	14043 State Rd., North Royalton	6/88	✓	9/15/98	✓
22406	1318416996	8200 Columbia Rd., Olmsted Falls	6/82	✓	na	
22412	1318456998	7510 Broadview Road, Seven Hills	na		10/15/03	✓
22413	1318457004	6585 Ridge Road, Parma	na		6/17/04	✓
22417	1318487012	775 Richmond Rd., Richmond Hts.	na		6/25/03	✓
22446	1318507015	19400 Hilliard Rd., Rocky River	na		10/08/03	✓
22425	1318527018	20420 Chagrin Blvd., Shaker Hts.	1/86	✓	na	
22434	1318527022	2643 Warrensville Rd., University Hts.	6/86	✓	na	
22433	1318567032	2159 South Green Rd., University Hts.	na		10/22/03	✓
22435	1318597033	4591 Richmond Rd., Warrensville Hts.	na		6/17/04	✓
79682	1318617494	25525 Center Ridge Rd., Westlake	na		6/17/04	✓
22436	1318617038	25466 Detroit Rd., Westlake	3/95	✓	na	

4. CDAQ sent Notice of Violation letters concerning these violations to Respondent in correspondence dated October 13, 2003; November 14, 2003; February 23, 2004; and August 18, 2004.

5. In April 2003, Respondent submitted PTI applications to CDAQ for the following GDFs. These applications were processed by CDAQ and PTIs were issued on the dates indicated below.

<u>BP #</u>	<u>Ohio EPA Premise #</u>	<u>PTI #</u>	<u>Issued</u>
22374	1318006926	13-04155	May 13, 2003
22197	1318397986	13-04168	August 7, 2003
22406	1318416996	13-04166	August 28, 2003

6. On the dates indicated below, Respondent submitted PTI applications to CDAQ for the following GDFs:

<u>BP #</u>	<u>Ohio EPA Premise #</u>	<u>Submitted</u>
26352	1318316950	October 2003
22456	1318166956	October 2003
22387	1318276971	October 2003
22366	1318006921	October 2003
22445	1318006923	October 2003
22360	1318006935	October 2003
26491	1318127248	October 2003

22436	1318617038	October 2003
22365	1318006889	October 2003

CDAQ returned the applications to Respondent because they were not signed by a corporate official, as that term is defined in OAC Rule 3745-31-04(B)(1), and were determined to be incomplete applications.

7. On the dates indicated below, Respondent submitted PTO applications to CDAQ for the following GDFs:

<u>BP #</u>	<u>Ohio EPA Premise #</u>	<u>Submitted</u>
26352	1318136950	October 2003
22456	1318166956	October 2003
22387	1318276971	October 2003
22365	1318006889	October 2003
22197	1318397986	October 2003
22452	1318286978	October 2003
22446	1318507015	October 2003
27823	1318006930	October 2003
22433	1318567032	October 2003
22402	1318376989	October 2003
22351	1318037574	March 2004
22352	1318036938	March 2004
22232	1318007402	March 2004
22443	1318106948	March 2004
22390	1318336983	March 2004
27368	1318006917	March 2004
22357	1318096946	March 2004
22394	1318366987	March 2004
22413	1318457004	March 2004
79682	1318617494	March 2004
22435	1318597033	March 2004

CDAQ returned the applications to Respondent because they were not signed by a corporate official, as that term is defined in OAC Rule 3745-35-02(B)(1), and were determined to be incomplete applications.

8. Respondent has since submitted complete PTI and PTO applications for the remaining GDFs for which such applications had not been submitted. On the dates indicated below, Ohio EPA issued PTIs for the following GDFs:

<u>BP #</u>	<u>Ohio EPA Premise #</u>	<u>PTI #</u>	<u>Issued</u>
26352	1318316950	13-04449	December 2, 2004
22456	1318166956	13-04450	December 14, 2004
22387	1318276971	13-04452	December 7, 2004
22445	1318006923	13-04439	December 7, 2004
22360	1318006935	13-04441	December 2, 2004
26491	1318127248	13-04448	December 14, 2004
22436	1318617038	13-04465	December 14, 2004
22365	1318006889	13-04437	December 2, 2004
27823	1318006930	13-04440	December 9, 2004
22449	1318106948	13-04447	December 2, 2004
22451	1318226967	13-04451	December 7, 2004
22452	1318286978	13-04453	December 7, 2004
22425	1318527018	13-04461	December 9, 2004
22434	1318527022	13-04462	December 14, 2004

9. As of June 2005, the PTO applications referenced in Finding 8 have been preliminarily approved by CDAQ and will be processed for issuance.

10. 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 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 sixty-seven thousand dollars (\$67,000) in settlement of Ohio EPA's claims for civil penalties, which may be assessed pursuant to ORC Chapter 3704. Within fourteen (14) 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 fifty-three thousand six hundred dollars (\$53,600) of the total amount. 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
P.O. Box 1049
Columbus, Ohio 43216-1049

2. In lieu of paying the remaining thirteen thousand four hundred dollars

(\$13,400) of civil penalty, Respondent shall fund a Supplemental Environmental Project ("SEP") by making a contribution in the amount of \$13,400 to the Ohio EPA's fund for Clean Diesel School Bus Program. Respondent shall make payment on or within thirty (30) days after the effective date of these Orders, but not earlier than July 1, 2005, by tendering an official check made payable to "Treasurer, State of Ohio" for \$13,400. The official check shall be submitted to Brenda Case, or her successor, together with a letter identifying the Respondent, to the above-stated address.

3. A copy of each of the above checks shall be sent to James A. Orlemann, Assistant Chief, SIP Development and Enforcement, 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 timeframe set forth in Order 2, Respondent shall immediately pay to Ohio EPA \$13,400 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 Respondent's activities at the 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 Respondent.

IX. MODIFICATIONS

These Orders may be modified by agreement of the parties. 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:

City of Cleveland
Division of Air Quality
1925 St. Clair Ave.
Cleveland, Ohio 44114-2080
Attn: Andrew Shroads

and to:

Ohio Environmental Protection Agency
Lazarus Government Center
Division of Air Pollution Control
P.O. Box 1049
Columbus, Ohio 43216-1049
Attn: Tom 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

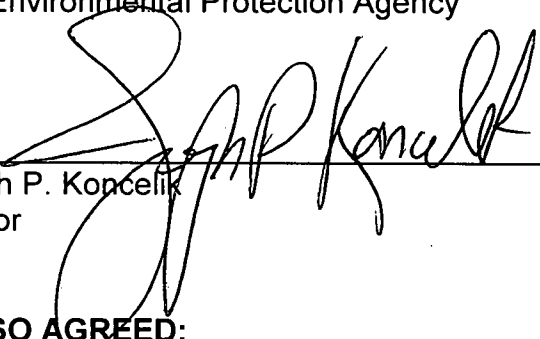
The effective date of these Orders is the date these Orders are entered into the Ohio EPA Director's journal.

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.

IT IS SO ORDERED AND AGREED:

Ohio Environmental Protection Agency



Joseph P. Koncelik
Director

9/2/05
Date

IT IS SO AGREED:

BP Products North America Inc.



Signature

8/29/05
Date

WILLIAM J FRY
Printed or Typed Name

VP OPERATIONS
Title