

OHIO E.P.A.
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ENTERED DIRECTOR'S JOURNAL

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

United Dairy Farmers, Inc. : Director's Final Findings
3955 Montgomery Road : and Orders
Cincinnati, Ohio 45212 :

PREAMBLE

It is agreed by the parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to United Dairy Farmers Inc. and its affiliated entities that are responsible for the matters herein (collectively the "Respondent") pursuant to the asuthority 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 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 meaning as defined in ORC Chapter 3704 and the rules promulgated thereunder.

IV. FINDINGS

The Director of Ohio EPA makes the following findings. Nothing in the findings shall be considered to be an admission by Respondent of any matter of law or fact:

1. Respondent has corporate offices located at 3955 Montgomery Road, Cincinnati, Ohio and owns and operates approximately 86 gasoline dispensing facilities ("GDFs") in various locations in Ohio. These 86 GDFs are subject to the requirements of Ohio Administrative Code ("OAC") Rule 3745-21-09(DDD) concerning Stage II vapor control systems. The thirteen GDFs listed below are specifically identified in Findings 11 through 21. 2059 Dale Road, Cincinnati, Ohio (UDF #071 - Facility ID #1431372711); 1865 Queen City Avenue, Cincinnati, Ohio (UDF #124 - Facility ID

#1431073361); 4269 Plainville Road, Cincinnati, Ohio (UDF #005 - Facility ID #1431163316); 2151 Losantiville Road, Cincinnati, Ohio (UDF #010 - Facility ID #1431193139); 857-961 Cinti-Batavia Pike, Batavia, Ohio (UDF #139 - Facility ID #1413000338); 5615 Wolfpen Pleasant Hill Road, Milford, Ohio (UDF #033 - Facility ID #1413080313); 2200 Winemiller Road, Batavia, Ohio (UDF #130 - Facility ID #1413020328); 1239 US State Route 50, Milford, Ohio (UDF #133 - Facility ID #1413080332); 4255 Hamilton-Middletown Road (UDF #31 - Facility ID #1409040845); 711 Ohio Pike (UDF #122 - Facility ID #1413000342); 1788 Ohio Pike (UDF #126 - Facility ID #1413000321); 6514 Tylersville Road (UDF #61 - Facility ID #1483090289) and 861 Eastgate South Drive, Cincinnati, Ohio (UDF #113 - Facility ID #1413000308).

2. Southwest Ohio Air Quality Agency ("SWOAQA") is the contractual agent for Ohio EPA in Butler County, Clermont County, Hamilton County, and Warren 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)(a) 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 all the vapors displaced from the motor vehicle are vented to a vapor control system which is designed and operated to maintain an overall control efficiency of not less than ninety-five percent by weight, for the VOC in the displaced vapors and which is California Air Resources Board ("CARB") certified.

5. 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 CARB certification, and is free from defect.

6. 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).

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 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.

9. From August of 2010 through August of 2011, Respondent failed to timely conduct the annual Stage II compliance tests at 46 GDFs owned and operated by Respondent. Eighteen of these GDFs had no 2010 annual Stage II compliance tests conducted. The failure to conduct and/or timely conduct the annual Stage II compliance tests were violations of ORC § 3704.05(G) and OAC Rules 3745-21-09(DDD)(1)(c) and (2)(f). By letters dated October 14, 2010, November 16, 2010, December 10, 2010, December 21, 2010, January 10, 2011, February 10, 2011, June 3, 2011 and August 15, 2011, SWOAQ notified Respondent of the failure to timely conduct the annual Stage II compliance tests.

10. From September of 2011 until the October 2013, Respondent failed to timely conduct the annual Stage II compliance tests for 22 GDFs owned and operated by Respondent. The failure to conduct and/or timely conduct the annual Stage II compliance tests were violations of ORC § 3704.05(G) and OAC Rules 3745-21-09(DDD)(1)(c) and (2)(f).

11. For UDF #124, on October 10, 2011, SWOAQA conducted an inspection of this GDF and discovered that the Stage II vapor recovery system was not in operation and gasoline was being dispensed into motor vehicles. The transferring of gasoline from stationary storage tanks into motor vehicles without using the Stage II vapor recovery system, is a violation of ORC § 3704.05(G) and OAC Rule 3745-21-09(DDD)(1). In addition, the failure to report the malfunction to the Ohio EPA or local air agency was a violation of OAC Rule 3745-15-06(B) and ORC § 3704.05(G). By letter dated, October 20, 2011, SWOAQA notified Respondent of these violations.

12. For UDF #071, on October 4, 2011, SWOAQA conducted an inspection of this GDF and discovered that the Stage II vapor recovery system was not in operation. Logs being kept at the GDF indicated that the last time the Stage II vapor recovery system was in operation was July 7, 2011. At the time of the inspection, gasoline was being dispensed into motor vehicles. The transferring of gasoline from stationary storage tanks into motor vehicles without using the Stage II vapor recovery system, is a violation of ORC § 3704.05(G) and OAC Rule 3745-21-09(DDD)(1). In addition, the failure to report the malfunction to the Ohio EPA or local air agency was a violation of OAC Rule 3745-15-06(B) and ORC § 3704.05(G). By letter dated, October 5, 2011, SWOAQA notified Respondent of these violations. By letter dated October 26, 2011, Respondent submitted a response to SWOAQA indicating that the Stage II vapor recovery system was not working due to a motor failure and that the motor was replaced on October 5, 2011.

13. For UDF #005, on October 11, 2011, SWOAQA conducted an inspection of this GDF and discovered that the vapor control board on dispensers 1 and 2 was not operating; therefore, Respondent was not operating the Stage II vapor recovery system in accordance with OAC Rule 3745-21-09(DDD). At the time of the inspection, gasoline was being dispensed into motor vehicles. The transferring of gasoline from stationary storage tanks into motor vehicles without properly using the Stage II vapor recovery system, is a violation of ORC § 3704.05(G) and OAC Rule 3745-21-09(DDD)(1). In addition, the failure to report the malfunction to the Ohio EPA or local air agency was a violation of OAC Rule 3745-15-06(B) and ORC § 3704.05(G). By letter dated, October 20, 2011, SWOAQA notified Respondent of these violations.

14. For UDF #010, on October 12, 2011, SWOAQA conducted an inspection of this GDF and discovered that the vapor control board on dispensers 1 and 2 was not operating; therefore, Respondent was not operating the Stage II vapor recovery system in accordance with OAC Rule 3745-21-09(DDD). At the time of the inspection, gasoline was being dispensed into motor vehicles. The transferring of gasoline from stationary storage tanks into motor vehicles without properly using the Stage II vapor recovery system, is a violation of ORC § 3704.05(G) and OAC Rule 3745-21-09(DDD)(1). In addition, the failure to report the malfunction to the Ohio EPA or local air agency was a violation of OAC Rule 3745-15-06(B) and ORC § 3704.05(G). By letter dated, October 20, 2011, SWOAQA notified Respondent of these violations.

15. For UDF #139, on October 18, 2011, SWOAQA conducted an inspection of this GDF and discovered that the Stage II vapor recovery system was not operating; therefore, Respondent was not operating the Stage II vapor recovery system in accordance with OAC Rule 3745-21-09(DDD). At the time of the inspection, gasoline was being dispensed into motor vehicles. The transferring of gasoline from stationary storage tanks into motor vehicles without using the Stage II vapor recovery system, is a violation of ORC § 3704.05(G) and OAC Rule 3745-21-09(DDD)(1). In addition, the failure to report the malfunction to the Ohio EPA or local air agency was a violation of OAC Rule 3745-15-06(B) and ORC § 3704.05(G). By letter dated, October 20, 2011, SWOAQA notified Respondent of these violations.

16. For UDF #113, UDF #033, UDF #133, and UDF #130, on October 19, 2011, SWOAQA conducted inspections at each of these GDFs and discovered that the Stage II vapor recovery systems were not in operation at each GDF. Respondent was dispensing gasoline into motor vehicles at each GDF. The transferring of gasoline from stationary storage tanks into motor vehicles without using the Stage II vapor recovery system, is a violation of ORC § 3704.05(G) and OAC Rule 3745-21-09(DDD)(1). In addition, the failure to report the malfunction to the Ohio EPA or local air agency was a violation of OAC Rule 3745-15-06(B) and ORC § 3704.05(G). By letter dated, October 20, 2011, SWOAQA notified Respondent of these violations.

17. By letter dated October 26, 2011, Respondent submitted a response to SWOAQA's notice of violation letter dated October 20, 2011.

18. On October 20, November 9, November 14, and November 15, 2011, SWOAQA conducted inspections at UDF #122, UDF #071, UDF #031, and UDF #130, respectively. During each of these inspections, SWOAQA discovered that the Stage II vapor recovery systems were not operating in accordance with OAC Rule 3745-21-09(DDD)(1). During each inspection, Respondent was dispensing gasoline into motor vehicles. The transferring of gasoline from stationary storage tanks into motor vehicles without using or properly using the Stage II vapor recovery system, is a violation of ORC § 3704.05(G) and OAC Rule 3745-21-09(DDD)(1). In addition, the failure to report the malfunction to the Ohio EPA or local air agency was a violation of OAC Rule 3745-15-06(B) and ORC § 3704.05(G). By letter dated, November 15, 2011, SWOAQA notified Respondent of these violations.

19. By letter dated December 1, 2011, Respondent submitted a response to SWOAQA's notice of violation letter dated November 15, 2011. In this letter, Respondent indicated that the GDFs referenced in Finding Nos. 11 through 16 and 18 of these Orders were non-compliant for a total 1,443 days from November of 2010 through November of 2011.

20. On August 16, 2012, SWOAQA conducted inspections at UDF #130 and UDF #139. At each of these inspections, SWOAQA discovered that the Stage II vapor recovery systems were not in operation at each GDF. Respondent was dispensing gasoline into motor vehicles at each GDF. The transferring of gasoline from stationary storage tanks into motor vehicles without using the Stage II vapor recovery system, is a violation of ORC § 3704.05(G) and OAC Rule 3745-21-09(DDD)(1). By letter dated, August 21, 2012, SWOAQA notified Respondent of these violations.

21. On March 22, 2013, SWOAQA conducted inspections at UDF #113, UDF #033, UDF #126, UDF #122, and UDF #61. At each of these inspections, SWOAQA discovered that the Stage II vapor recovery systems were not in operation at each GDF. Respondent was dispensing gasoline into motor vehicles at each GDF. The transferring of gasoline from stationary storage tanks into motor vehicles without using the Stage II vapor recovery system, is a violation of ORC § 3704.05(G) and OAC Rule 3745-21-09(DDD)(1). In addition, the failure to report the malfunction to the Ohio EPA or local air agency was a violation of OAC Rule 3745-15-06 and ORC § 3704.05(G). By letter dated, March 26, 2013, SWOAQA notified Respondent of these violations. On April 4, 2013, Respondent submitted a response to SWOAQA's notice of violation letter dated March 26, 2013.

22. By letter dated October 8, 2013, SWOAQA notified Respondent that UDF #64 failed to conduct a passing Stage II compliance test in 2012, in violation of ORC § 3704.05(G) and OAC Rule 3745-21-09(DDD). In addition, for UDF #172, Respondent failed to obtain a permit and conduct stage II testing within 60 days of starting up operations. By letter dated October 19, 2013, Respondent submitted a response to SWOAQA's notice of violation letter dated October 8, 2013.

23. 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 one hundred and ten thousand dollars (\$110,000) 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 eighty-eight thousand dollars (\$88,000) [Split to Fund 6960 and Fund 6A10] of the total amount. The official check 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. In lieu of paying the remaining twenty-two thousand dollars (\$22,000) of the civil penalty, Respondent shall, within thirty (30) days of the effective date of these Orders, fund a Supplemental Environmental Project ("SEP") by making a contribution in the amount of \$22,000 to the Ohio EPA's Clean Diesel School Bus Program Fund (Fund 5CD0). Respondent shall tender an official check made payable to "Treasurer, State of Ohio" for \$22,000. The official check shall be submitted to Carol Butler, 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, 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

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 \$22,000 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 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 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:

Southwest Ohio Air Quality Agency
250 William Howard Taft Road
Cincinnati, Ohio 45219
Attn: Kerri Castlen

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



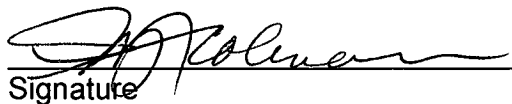
Craig W. Butler
Director

4/29/14

Date

AGREED:

United Dairy Farmers Inc.



Signature

4/9/2014

Date

MARILYN R. COLEMAN

Printed or Typed Name

CFO

Title