

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

Santmyer Oil Company, Inc.	:	<u>Director's Final Findings</u>
1055 W. Old Lincoln Way	:	<u>and Orders</u>
P.O. Box 146	:	
Wooster, Ohio 44691	:	

PREAMBLE

It is agreed by the parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to Santmyer Oil Company, 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's operations 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 has determined the following findings:

1. **Respondent is a corporation organized under the laws of the State of Ohio and licensed to transact business in the State of Ohio.** Respondent has its principal place of business located at 1055 W. Old Lincoln Way, Wooster (Wayne County), Ohio. Respondent has its principal place of business located at 1055 W. Old Lincoln Way, Wooster (Wayne County), Ohio. Respondent owns and operates gasoline tank trucks for

the purpose of delivering gasoline to gasoline dispensing facilities.

2. Ohio Administrative Code ("OAC") Rules 3745-21-04(C)(29) and 3745-21-09(V)(1)(i) prohibit, in part, any owner or operator of a gasoline tank truck, as of March 31, 1983, to use such tank for the transfer of gasoline at a gasoline dispensing facility that employs a vapor balance system ("VBS") unless the transfer is done in a manner that ensures the proper operation of the VBS. Furthermore, ORC § 3704.05(G) prohibits the violation of any rule adopted by the Director of Ohio EPA.

3. On December 13, 2002, an inspector from the Canton Air Pollution Control Division ("Canton APCD"), Ohio EPA's contractual representative in Stark County, observed a gasoline tanker owned by Respondent, with tanker ID number 4110, unloading gasoline into two (2) underground storage tanks at the gasoline dispensing facility ("GDF") located at the B-J's Wholesale Club Fuel Station #10 at 7000 Frank Avenue NW in Jackson Township of Stark County, Ohio. The inspector observed gasoline being unloaded without the use of the VBS connection equipment, in violation of OAC Rule 3745-21-09(V)(1)(i). A violation of the OAC is a violation of ORC § 3704.05(G).

4. The inspector notified **the tank truck driver of the violation. The inspector inquired why the driver initiated the unloading without connecting to the VBS.** The driver stated he had been informed not to use the VBS in **southern Ohio because of the sparse population. Upon request of Canton APCD, the driver connected a vapor balance hose to the underground storage tank ports via a connector.**

5. This was Respondent's second violation, in Stark County, within a two-year period. On May 10, 2001, another violation by Respondent resulted in the issuance of Director's Final Findings and Orders to Respondent.

6. On December 16, 2002, Canton APCD sent a warning letter to Respondent, concerning the violation of OAC Rule 3745-21-09(V)(1)(i).

7. 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 the benefits to the people of the State to be derived from such compliance.

V. ORDERS

The Director hereby issues the following Order:

Within fourteen (14) days after the effective date of these Orders, Respondent shall pay Ohio EPA the amount of one thousand seven hundred and fifty dollars (\$1,750) 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 check made payable to "Treasurer, State of Ohio" for \$1,750. The official check shall be submitted to Brenda Case, Fiscal Specialist, or her successor, at Ohio EPA, Office of Fiscal Administration, P.O. Box 1049, Columbus, Ohio 43216-1049, together with a letter identifying the Respondent and the site of violation.

A copy of the check shall be sent to James A. Orlemann, Manager, Engineering Section, or his successor, at the following address:

Division of Air Pollution Control
Ohio Environmental Protection Agency
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 check 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 operations.

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's operations.

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

Except as otherwise specified in these Orders, all documents required to be submitted

by Respondent pursuant to these Orders shall be addressed to:

Canton Local Air Agency
Division of Air Pollution Control
420 North Market Avenue North
Canton, Ohio 44702-1544
Attn: Rick Miller

and to:

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

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 waive 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 an appeal. In such event, Respondent shall continue to comply with these Orders 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 this document.

IT IS SO ORDERED AND AGREED:

Ohio Environmental Protection Agency

Christopher Jones
Director

Date

IT IS SO AGREED:

Santmyer Oil Company, Inc.

Signature

Date

Printed or Typed Name

Title

Director's Final Findings and Orders
Santmyer Oil Company, Inc.
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