

**BEFORE THE  
OHIO ENVIRONMENTAL PROTECTION AGENCY**

**In the Matter of:**

<b>Ten Bay Oil Company, Inc.</b>	<b>:</b>	<b><u>Director's Final Findings</u></b>
<b>19365 Euclid Avenue</b>	<b>:</b>	<b><u>and Orders</u></b>
<b>Euclid, OH 44117</b>	<b>:</b>	

**PREAMBLE**

It is agreed by the parties hereto as follows:

**I. JURISDICTION**

These Director's Final Findings and Orders are issued to Ten Bay 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 facility 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 duly organized under the laws of the State of Ohio. The Respondent owns and operates a gasoline dispensing facility ("GDF"), emissions unit G001, which is located at 19365 Euclid Avenue, Euclid, Ohio. Emissions unit G001 contains four pumping stations with a total of eight nozzles, all equipped with stage I and stage II vapor controls. The facility is identified by Ohio EPA as facility

identification #1318206789. The facility, formerly Indian Hills Sunoco, had a transfer of ownership in December of 2000, thereby becoming Ten Bay Oil Company.

2. Emissions unit G001 is an "air contaminant sources" as defined by Ohio Administrative Code ("OAC") Rules 3745-31-01(D) and 3745-35-01(B)(1).

3. As required in OAC Rule 3745-35-02(A), no person shall operate any air contaminant source without applying for and obtaining a permit to operate ("PTO") from the Director of Ohio EPA unless otherwise exempted by rule or law.

4. As required in OAC Rule 3745-21-09(DDD)(3)(a)(ii-vii), the following records shall be maintained at the GDF: results of any tests performed on the stage II vapor control system; a log of repairs and maintenance and any modifications of the vapor control system; copy of the most recent PTO application and emissions activity category form(s); a copy of the most recent PTO issued by Ohio EPA; proof of attendance and completion of required training; and copies of all completed post-test inspection forms.

5. As required in OAC Rule 3745-21-09(DDD)(3)(b), all records shall be retained by the owner or operator for a period of not less than three years and shall be made available to Ohio EPA for review.

6. As required in OAC Rule 3745-21-09(DDD)(2)(d), at intervals not to exceed five years, compliance with the requirements of the tests specified in OAC Rule 3745-21-09(DDD)(2) shall be redemonstrated by testing the stage II vapor control system.

7. As required in OAC Rule 3745-21-09(DDD)(1)(b), the stage II vapor control system must be installed, operated and maintained in accordance with the manufacturer's specifications and the California Air Resources Board, and must be free of defects. Furthermore, as required in OAC Rule 3745-21-09(DDD)(1)(c), the vapor control system must successfully pass the testing requirements contained in OAC Rule 3745-21-09(DDD)(2) in order to allow the transfer of gasoline to motor vehicles.

8. As required in ORC § 3704.05(A), (C) and (G), no person shall allow the emission of an air contaminant in violation of any rule adopted by the Director of Ohio EPA, no person shall violate any terms or conditions of a permit issued by the Director of Ohio EPA, and no person shall violate any order, rule or determination of the Director of Ohio EPA.

9. The Respondent was inspected on November 7 and 9, 2001 by the Cleveland Local Air Agency ("CLAA"), Ohio EPA's contractual representative in Cuyahoga County. The inspector noted the following:

- a. The Respondent's PTO for the GDF expired on November 17, 1997 and a timely renewal application was not submitted. This is a violation of OAC Rule 3745-35-02(A) and ORC § 3704.05.

- b. All records required under OAC Rule 3745-21-09(DDD)(3)(a)(ii-vii) were not being kept and available for review by Ohio EPA, in violation of OAC Rule 3745-21-09(DDD)(3)(a)(ii-vii) and OAC Rule 3745-21-09(DDD)(3)(b). Furthermore, the inspector noted that no records were available to show the required testing of the stage II vapor control system used to determine compliance with OAC Rule 3745-21-09(DDD)(2) had ever been conducted. Therefore, it is assumed the testing was not conducted, which is a violation of OAC Rule 3745-21-09(DDD)(2)(d) and OAC Rule 3745-21-09(DDD)(1)(c). These violations also constitute violations of ORC § 3704.05(A) and (G).

8. A notice of violation ("NOV") was issued on November 21, 2001 citing the violations of OAC Rule 3745-35-02(A) and ORC § 3704.05, and requesting a corrective action plan be submitted within 14 days. The appropriate permit application and supplemental forms were provided by CLAA. A corrective action plan was not received. A complete PTO renewal application was received, after repeated attempts to obtain the application, on January 17, 2002.

9. CLAA telephoned the Respondent on February 4, 2002 to discuss the testing requirements. The Respondent expressed it was checking with the former facility owner to see if the testing had been performed and also agreed to perform a new test.

10. The Respondent submitted an intent to test ("ITT") form to CLAA on February 7, 2002. A test of the vapor control system was conducted on February 28, 2002 and the Respondent failed the test. Therefore, the Respondent was operating in violation of OAC Rule 3745-21-09(DDD)(1)(b-c) and ORC § 3704.05(A) and (G). A contractor was hired and repairs were made to the vapor control system on April 14, 2002.

11. Ohio EPA issued a warning letter to Respondent on March 7, 2002 outlining the violations above. The Respondent was asked to comply with the requirements and perform the required testing within 30 days.

12. A CLAA representative confirmed the Respondent began keeping the required records as of May 1, 2002.

13. The Respondent submitted a 2<sup>nd</sup> ITT to CLAA on May 2, 2002. A test of the vapor control system was conducted on May 8, 2002 which the Respondent again failed. Therefore, the Respondent continued operating in violation of OAC Rule 3745-21-09(DDD)(1)(b-c) and ORC § 3704.05(A) and (G). Additional repairs were made to the vapor control system.

14. The Respondent submitted a 3<sup>rd</sup> ITT to CLAA on June 2, 2002. A test of the vapor control system was conducted on June 11, 2002 which the Respondent again failed. Therefore, the Respondent continued operating in violation of OAC Rule 3745-21-

09(DDD)(1)(b-c) and ORC § 3704.05(A) and (G).

15. On June 14, 2002, a CLAA representative spoke with the Respondent and requested a compliance plan be submitted. The plan was received on July 5, 2002 and stated that new vents will be installed and a passing test would be conducted by August 15, 2002.

16. The Respondent submitted a 4<sup>th</sup> ITT to CLAA on August 1, 2002. A test of the vapor control system was conducted on August 6, 2002, which the Respondent passed.

17. The Respondent submitted financial documents to Ohio EPA on April 18, 2003 supporting its claim of inability to pay the entire civil penalty of twenty-six thousand six hundred twenty dollars (\$26,620). Ohio EPA found that the Respondent could pay only a portion of the civil penalty.

18. 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 Order:

Within fourteen (14) days from the effective date of these Orders, Respondent shall pay Ohio EPA the amount of three thousand dollars (\$3,000) in settlement of Ohio EPA's claim for civil penalties which may be assessed pursuant to ORC Chapter 3704. Payment shall be made by an official check made payable to "Treasurer, State of Ohio" and sent to the following address together with a letter identifying the Respondent:

Brenda Case  
Fiscal Administration  
Ohio Environmental Protection Agency  
P.O. Box 1049  
Columbus, OH 43216-1049

A copy of the check shall be sent to Jim Orlemann at the following address:

Division of Air Pollution Control  
Ohio Environmental Protection Agency  
P.O. Box 1049  
Columbus, OH 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 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**

Except as otherwise provided in these Orders, all documents required to be submitted by Respondent pursuant to these Orders shall be addressed to:

Cleveland Local Air Agency  
Department of Public Health  
1925 St. Clair Avenue  
Cleveland, Ohio 44114-2080  
Attn: Chief of Enforcement

and to:

Ohio Environmental Protection Agency  
Division of Air Pollution Control

P.O. Box 1049  
Columbus, OH 43216-1049  
Attn: Tom Kalman

## **XI. RESERVATION OF RIGHTS**

Ohio EPA and Respondent each reserve all rights, privileges and causes of action.

## **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**

\_\_\_\_\_  
Christopher Jones  
Director

\_\_\_\_\_  
Date

**IT IS SO AGREED:**

**Ten Bay Oil Company, Inc.**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed or Typed Name

\_\_\_\_\_  
Title