

BEFORE THE  
OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

Mark McLean, d.b.a.  
Mark's Marathon  
3050 Lincoln Way East  
Massillon, Ohio 44646

Director's Final Findings  
and Orders

ENTERED DIRECTOR'S JOURNAL

OCT - 5 2004

OHIO E.P.A.

PREAMBLE

It is agreed by the parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to Mark McLean, d.b.a. Mark's Marathon ("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 (as identified hereinafter) 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 owns and operates a gasoline dispensing facility ("GDF") located at 3050 Lincoln Way East, Massillon, Stark County, Ohio (Ohio EPA premise number 1576001631). The facility was purchased by Respondent in July 1995. The GDF is subject to the requirements of Ohio Administrative Code ("OAC") Rule 3745-21-09 concerning stage I vapor control systems.

2. At the facility, Respondent operates three (3) 6,000 gallon gasoline tanks, one 1,000 gallon Turbo Blue Racing Gasoline tank, one 500 gallon used oil tank, and one 250 gallon above ground kerosene tank. Each of these tanks is an "air contaminant source" as defined by OAC Rule 3745-15-01(C) and (W). Emissions from the gasoline tanks are controlled by a vapor balance system ("VBS").

I certify this to be a true and accurate copy of the official document as filed in the records of the Ohio Environmental Protection Agency.

*Dr. Joseph Jacks* 10/5/04

3. Permit to Install ("PTI") number 15-515 was issued by Ohio EPA for the GDF to a former owner of the GDF on August 16, 1989, pursuant to OAC Rule 3745-31-02. Respondent submitted a permit to operate ("PTO") application for the GDF to Ohio EPA on December 13, 1996. A PTO was issued by Ohio EPA to Respondent on May 1, 1997, pursuant to OAC Rule 3745-35-02, and expired on May 1, 2000. Prior to issuance of the PTO on May 1, 1997, Respondent had operated the GDF from July 1995 without a PTO, in violation of OAC Rule 3745-35-02(A) and ORC § 3704.05(G).

4. On February 19, 2002, Canton City Health Department, Air Pollution Control Division ("Canton"), Ohio EPA's contractual representative in Stark County, inspected the facility to determine the compliance status with all applicable air pollution regulations. During this inspection, Canton noted the following violations:

The VBS was in a state of disrepair and was observed to be malfunctioning on three of the underground storage tanks ("USTs"). In particular, the Turbo Blue Racing Gasoline UST was not connected to the VBS, and on two of the three 6,000 gallon gasoline USTs, the fill caps were broken. These findings constitute violations of OAC Rule 3745-21-09(R)(2)(a) and ORC § 3704.05(G).

It was noticed during the inspection that the PTO issued to Respondent had expired on May 1, 2000, and that no PTO renewal application had been submitted. This constitutes a violation of OAC Rule 3745-35-02(A) and ORC § 3704.05(G).

5. By letter dated February 21, 2002, Respondent was issued a Notice of Violation ("NOV") by Canton for the violations observed during the February 19, 2002 inspection. The NOV requested that the violations associated with the VBS be corrected within fifteen (15) days of receipt of the NOV. Additionally, Respondent was requested to submit a PTO renewal application to Canton within thirty (30) days of receipt of the NOV. Respondent contacted Canton by telephone on April 5, 2002 with questions regarding the NOV. Respondent indicated at that time that the necessary parts would be ordered to fix the VBS.

6. On April 26, 2002, Canton inspected the facility again. During this inspection, it was observed that the VBS had not been connected to the Turbo Blue Racing Gasoline UST, and one of the 6,000 gallon USTs still had a broken cap. During the time that the inspectors were at the facility, they observed a 690 gallon drop of Turbo Blue Racing Gasoline into the 1,000 gallon UST, without a VBS, in violation of OAC Rule 3745-21-09(R)(1)(b) and ORC § 3704.05(G). On June 4, 2002, Respondent contacted Canton by telephone to inform them that the VBS repairs had now been completed.

7. On June 13, 2002, Canton inspected the facility again. At this time it was observed that the VBS on each of the USTs was in good working order. Canton still had

not received a PTO renewal application for the GDF at the time of the inspection. The PTO renewal application was received from Respondent by Canton on July 12, 2002.

8. On January 31, 2003, Canton issued an NOV for exceedances of the allowable volatile organic compound ("VOC") emission limitation contained in Respondent's PTO issued on May 1, 1997, and the PTI issued on August 6, 1989. Both the PTO and PTI contained a VOC emission limitation of 2.0 tons per year ("TPY") for the GDF. Based on the Emissions Activity Category ("EAC") forms submitted along with the PTO applications in December 1996, and July 2002, and using a standard emission factor of 13 pounds of VOC per 1,000 gallons of gasoline unloaded, the uncontrolled emissions from Respondent's facility were calculated to be 1.56 TPY for the 1994, 3.12 TPY for 1995, 5.07 TPY for 2000, and 5.07 TPY for 2001. These emissions constitute a violation of the limitation contained in PTI # 15-515 and Respondent's PTOs and are a violation of ORC § 3704.05(C).

9. On February 11, 2003, Canton received complete PTI and PTO applications for Respondent's facility. The PTI for the facility was issued final on February 20, 2003, and replaced PTI number 15-515. The PTI included a new emission limitation of 10 TPY of VOC for the facility.

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 Order:

Respondent shall pay Ohio EPA the amount of two thousand seven hundred dollars (\$2,700) in settlement of Ohio EPA's claims for civil penalties, which may be assessed pursuant to ORC § 3704.06. This amount shall be paid in twelve equal monthly installments of two hundred twenty-five dollars (\$225), with the first payment due by October 1, 2004 and subsequent payments due by the first day of each month thereafter. Each payment shall be made by an official check made payable to "Treasurer, State of Ohio" for \$225. Each official check shall be submitted to Brenda Case, or her successor, Ohio EPA, Office of Fiscal Administration, P.O. Box 1049, Columbus, Ohio 43216-1049, together with a letter identifying the Respondent and the facility.

A copy of each check shall be sent to Jim Orlemann, Assistant Chief, Enforcement Section, 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 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, operations by Respondent.

#### **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:

Canton City Health Department  
Division of Air Pollution Control  
420 Market Avenue North  
Canton, OH 44702  
Attn: Daniel J. Aleman

---

and to:

Ohio Environmental Protection Agency  
Division of Air Pollution Control  
P.O. Box 1049  
Columbus, OH 43216-1049  
Attn: Paul Cree

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**

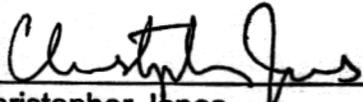
The effective date of these Orders is the date these Orders are entered into the Ohio EPA Director's journal.

**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**

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

9-30-04  
Date

**IT IS SO AGREED:**

**Mark McLean**

  
\_\_\_\_\_  
Signature

9-22-04  
Date