

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

City of Montgomery	:	<u>Director's Final Findings</u>
10101 Montgomery Road	:	<u>and Orders</u>
Cincinnati, Ohio 45242	:	

PREAMBLE

It is hereby ordered that:

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to the City of Montgomery ("Respondent") pursuant to the authority vested in the Director of the Ohio Environmental Protection Agency ("Ohio EPA") under Ohio Revised Code ("ORC") §§ 3704.03, 3704.14(H), 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 the ownership of the Respondent's fleet of motor vehicles (as hereinafter identified) 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, 4501, 4503, and 4511 and the rules promulgated thereunder.

IV. FINDINGS

The Director of Ohio EPA has determined the following findings:

1. Respondent is a government entity with offices located at 10101 Montgomery Road, Cincinnati, in Hamilton County, Ohio, a county that was designated as a nonattainment area for ozone and is part of a designated program area that is subject to an enhanced or opt-in enhanced vehicle inspection and maintenance program. Respondent owns or leases and operates a fleet of motor vehicles, as defined in ORC §§ 4501.01(B), 4503.16, and 4511.01(C), in this county, which are subject to biennial vehicle emissions inspections required pursuant to ORC § 3704.14(H) and OAC Rule 3745-26-12(A)(2).

2. OAC Rule 3745-26-01(AA) defines a "nonattainment area" as an area that has not achieved the National Ambient Air Quality Standards and that is required to undergo certain air pollution control strategies pursuant to the 1990 Clean Air Act Amendments.

3. OAC Rule 3745-26-01(H) defines a "designated program area" as any county currently or formerly classified as moderate, serious, severe or extreme nonattainment for carbon monoxide or ozone in accordance with the Clean Air Act Amendments of 1990 and that is subject to a basic, an enhanced, or an opt-in enhanced vehicle inspection and maintenance program, as described in OAC Rules 3745-26-10, 3745-26-12, 3745-26-13, and 3745-26-14.

4. OAC Rule 3745-26-12(A)(2) states, in part, that, unless otherwise exempt, each motor vehicle that is owned or leased by the State, local government, or any political subdivision whose office is located within a county that is part of a designated program area, is subject to inspection in odd numbered years and shall report the inspection results to the Director by December 31 of that year.

5. ORC § 3704.14(H) states, in part, that the federal government, the State, any political subdivision, and any agency or instrumentality of those entities, in accordance with rules adopted by the Director, shall have inspected any motor vehicles that they own and operate in any county that is subject to the vehicle inspection and maintenance program. Furthermore, this law states that rules shall establish a reporting requirement to assist the Director in determining compliance with this provision and that the Director may issue a notice of violation to a governmental entity that has violated any specific prohibition or has failed to comply with any affirmative requirement of this provision or any rule adopted under it. Also, this law states that the notice of violation shall set forth the specific violation allegedly committed by the governmental entity and shall be accompanied by an order requiring the governmental entity to pay a civil penalty of two hundred fifty dollars (\$250).

6. Per OAC Rule 3745-26-12(A)(2), Respondent was required to have each of its vehicles inspected during 2003 and to report the results to Ohio EPA no later than December 31, 2003.

7. In a letter dated January 29, 2003, Ohio EPA notified Respondent of its obligation to comply with the requirements of OAC Rule 3745-26-12(A)(2). Included with this letter was a copy of the Government Fleet Reporting form, with instructions.

8. In letters dated April 14, July 16, and October 17, 2003, Ohio EPA issued Respondent reminders of the government fleet testing and reporting requirements. Each of these reminder letters included the Government Fleet Reporting form, with instructions.

9. Respondent did not submit a completed Government Fleet Reporting form to Ohio EPA on or before December 31, 2003, in violation of OAC Rule 3745-26-12(A)(2).

10. In a letter dated January 9, 2004, Ohio EPA again informed Respondent of its obligation to comply with the requirements of OAC Rule 3745-26-12(A)(2). At that time, Ohio EPA notified Respondent that the deadline for complying with the testing and reporting requirements was being extended to January 30, 2004. A copy of the Government Fleet Reporting form, with instructions, was also included with the letter.

11. Respondent did not submit a completed Government Fleet Reporting form to Ohio EPA on or before January 30, 2004.

12. On March 2, 2004, Ohio EPA sent a warning letter to Respondent by certified mail. In this letter, Ohio EPA informed Respondent of its noncompliance with the requirements of OAC Rule 3745-26-12(A)(2) and extended the deadline for complying with the testing and reporting requirements to March 24, 2004. A copy of the Government Fleet Reporting form, with instructions, was again included with the letter.

13. Respondent did not submit a completed Government Fleet Reporting form to Ohio EPA on or before March 24, 2004.

14. Based on the above Findings, the Director of Ohio EPA finds that Respondent violated the following ORC laws and OAC rules:

- a. OAC Rule 3745-26-12(A)(2), for failing to have each motor vehicle that was subject to inspection in calendar year 2003 inspected before December 31, 2003, and for failing to report the inspection results to Ohio EPA by December 31, 2003; and
- b. ORC § 3704.14(H), for failing to have any motor vehicles that it owns and operates in a county that is subject to the vehicle inspection and maintenance program inspected, and for failing to report the inspection results to Ohio EPA.

This Finding constitutes a Notice of Violation pursuant to ORC § 3704.14(H).

15. ORC § 3704.06(C) provides, in part, that any person violating ORC § 3704.05 shall pay a civil penalty of not more than twenty-five thousand dollars (\$25,000) for each day of each violation. Therefore, failure to comply with these Orders shall subject the Respondent to a civil penalty of \$25,000 per day per violation.

16. 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.

17. 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 be derived from such compliance.

V. ORDERS

The Director hereby issues the following Orders:

1. Within fourteen (14) days after the effective date of these Orders, Respondent shall pay the amount of two hundred and fifty dollars (\$250) to Ohio EPA in settlement of Ohio EPA's claim for civil penalties, which may be assessed pursuant to ORC Chapter 3704.14.(H). Payment shall be made by an official check made payable to "Treasurer, State of Ohio" and shall be submitted to Brenda Case, or her successor, with a letter identifying the Respondent and the fleet, to:

Ohio EPA, Office of Fiscal Administration
P.O. Box 1049
Columbus, Ohio 43216-1049

A copy of the check shall be sent to James A. Orlemann, Assistant Chief, Compliance and Enforcement 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

2. Within thirty (30) days after the effective date of these Orders, and as required by OAC Chapter 3745-26, Respondent shall have inspected all motor vehicles that it owns and operates that are subject to the vehicle inspection and maintenance program.

3. Within sixty (60) days after the effective date of these Orders, Respondent shall report the results of the vehicle inspections, which were conducted pursuant to Order 2, to the Director by submitting a completed Government Fleet Reporting form to Ohio EPA.

VI. TERMINATION

Respondent's obligations under these Orders shall terminate when Respondent certifies in writing and demonstrates to the satisfaction of Ohio EPA that Respondent has performed all obligations under these Orders and the Chief of Ohio EPA's Division of Air Pollution Control acknowledges, in writing, the termination of these Orders. If Ohio EPA does not agree that all obligations have been performed, then Ohio EPA will notify Respondent of the obligations that have not been performed, in which case Respondent shall have an opportunity to address any such deficiencies and seek termination as described above.

The certification shall contain the following attestation: "I certify that the information

contained in or accompanying this certification is true, accurate and complete.”

This certification shall be submitted by Respondent to Ohio EPA and shall be signed by a responsible official of Respondent. For purposes of these Orders, a responsible official is as defined in OAC Rule 3745-35-02(B)(4) for a municipal, state, or other public facility.

VII. 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.

VIII. NOTICE

All documents required to be submitted by Respondent pursuant to these Orders shall be addressed to:

Ohio Environmental Protection Agency
Lazarus Government Center
Division of Air Pollution Control
P.O. Box 1049
Columbus, Ohio 43216-1049
Attention: Thomas Kalman, Manager, Enforcement Section
and
Glenn Luksik, Manager, Mobile Sources Section

or to such persons and addresses as may hereafter be otherwise specified in writing by Ohio EPA.

IX. RESERVATION OF RIGHTS

Nothing contained herein shall be construed to prevent Ohio EPA from seeking legal or equitable relief to enforce the terms of these Orders or from taking other administrative, legal or equitable action as deemed appropriate and necessary, including seeking penalties against Respondent for noncompliance with these Orders and/or for the violations described herein. Nothing contained herein shall be construed to prevent Ohio EPA from exercising its lawful authority to require Respondent to perform additional activities pursuant to ORC Chapter 3704 or any other applicable law in the future. Nothing herein shall restrict the right of Respondent to raise any administrative, legal or equitable claim or defense with respect to such further actions which Ohio EPA may seek to require of Respondent. Nothing in these Orders shall be construed to limit the authority of Ohio EPA to seek relief for violations not addressed in these Orders.

X. EFFECTIVE DATE

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

IT IS SO ORDERED:

Ohio Environmental Protection Agency

Christopher Jones
Director

Date