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

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

Cleveland Board of Education :
1380 E. 6th Street :
Cleveland, Ohio 44114 :

Director's Final Findings and Orders

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

By: _____ Date: 8-11-09

PREAMBLE

It is agreed by the parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to Cleveland Board of Education ("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

These Orders shall apply to and be binding upon Respondent and successors in interest liable under Ohio law. No change in ownership of Respondent 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 meanings as defined in ORC Chapter 3704 and the regulations promulgated thereunder.

IV. FINDINGS

All of the findings necessary for the issuance of these Orders pursuant to ORC §§ 3704.03 and 3704.01 have been made and are outlined below. Nothing in the findings shall be considered to be an admission by Respondent of any matter of law or fact. The Director of Ohio EPA has determined the following findings:

1. Respondent is a government entity with offices located at 1380 E. 6th Street, Cleveland, in Cuyahoga County, Ohio, a County that is 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 and Ohio Administrative Code ("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.

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(C) states, in part, that the Director may continue to implement and enforce rules pertaining to the enhanced motor vehicle inspection and maintenance program previously implemented under former ORC § 3704.14 as that section existed prior to its repeal and reenactment by Amended Substitute House Bill 66 of the 126th General Assembly.

6. OAC Rules 3745-26-01 and 3745-26-12, among others, are rules pertaining to the enhanced motor vehicle inspection and maintenance program previously implemented under former ORC § 3704.14 as that section existed prior to its repeal and reenactment by Amended Substitute House Bill 66 of the 126th General Assembly. Former ORC § 3704.14(H) stated, 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.

7. Per OAC Rule 3745-26-12(A)(2), Respondent was required to have each of its vehicles inspected during 2007 and to report the results to Ohio EPA no later than December 31, 2007.

8. In a letter dated February 5, 2007, 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.

9. In a letter dated July 16, 2007, Ohio EPA reminded Respondent of the government fleet testing and reporting requirements. This reminder letter included the Government Fleet Reporting form, with instructions.

10. Respondent did not submit a complete Government Fleet Reporting form that included test results for all of the vehicles registered to it to Ohio EPA on or before December 31, 2007, in violation of OAC Rule 3745-26-12(A)(2).

11. In a letter dated January 25, 2008, 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 February 20, 2008. A copy of the Government Fleet Reporting form, with instructions, was also included with the letter.

12. Respondent did not submit a complete Government Fleet Reporting form to Ohio EPA on or before February 20, 2008.

13. On May 14, 2008, 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 June 6, 2008. A copy of the Government Fleet Reporting form, with instructions, was again included with the letter.

14. Respondent did not submit a complete Government Fleet Reporting form to Ohio EPA on or before June 6, 2008.

15. Respondent submitted an incomplete Government Fleet Reporting form for calendar year 2007 to Ohio EPA on May 28, 2009. The report indicated that Respondent did not have each motor vehicle that was subject to inspection in calendar year 2007 inspected before December 31, 2007.

16. Based on the above Findings, the Director of Ohio EPA finds that Respondent violated OAC Rule 3745-26-12(A)(2), for failing to have each motor vehicle that was subject to inspection in calendar year 2007 inspected before December 31, 2007, and for failing to report the inspection results to Ohio EPA by December 31, 2007.

17. 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 could subject the Respondent to a civil penalty of up to $25,000 per day per violation.

18. 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.

19. Should Respondent fail to comply with these Orders, the Director of Ohio EPA may refer this matter to the Ohio Attorney General's Office where, pursuant to ORC § 3704.06, the Director may request that the Attorney General pursue litigation and seek civil penalties of up to $25,000 per day of violation.

20. 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 derived from such compliance.

V. ORDERS

The Director hereby issues the following Orders:

1. Per the requirements of OAC Rule 3745-26-12(A)(2), Respondent shall have each of its vehicles inspected during 2009 and report the results to Ohio EPA.

2. Respondent shall complete and submit status reports on Respondent's progress towards complying with the requirements of OAC Rule 3745-26-12(a)(2) for 2009 on an Ohio EPA approved form no later than September 1, 2009, and November 2, 2009.

3. Respondent shall pay the amount of five thousand dollars ($5,000) 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 five thousand ($5,000) within 30 days of the effective date of these Orders. The official check shall be submitted to Brenda Case, 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

4. A copy of the check shall be sent to James A. Orlemann, Assistant Chief, SIP Development and Enforcement, 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, OH 43216 – 1049

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 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 activities at the 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. 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:

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
Attention: John Paulian
Supervisor, Compliance Monitoring Section
and
Barbara Walker
Mobile Sources Section

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

Chris Korleski
Director

Date 8/10/09

IT IS SO AGREED:

Cleveland Board of Education

Signature

Date 7/23/09

STEPHEN L. DeVITA
Printed or Typed Name