OHIO E.P.A.

MAY 27 2010

ENTERED DIRECTOR'S JOURNAL

**BEFORE THE**

**OHIO ENVIRONMENTAL PROTECTION AGENCY**

In the Matter of:

| | | |
|---|---|---|
| **Pure Gas Incorporated**<br>**228 E. Erie Avenue**<br>**Lorain, Ohio 44052** | :<br>:<br>: | Director's Final Findings and Orders |

## PREAMBLE

It is agreed by the parties hereto as follows:

## I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to Pure Gas Incorporated ("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 hereinafter defined) 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 makes the following findings:

1. Respondent owns and operates a gasoline dispensing facility ("GDF") located at 228 E. Erie Avenue, in Lorain (Lorain County), Ohio. This GDF is subject to the requirements of Ohio Administrative Code ("OAC") Rule 3745-21-09(DDD) concerning Stage II vapor control systems.

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: 5-27-10

2. On July 31, 2008, Respondent submitted and was issued a permit-by-rule ("PBR") by Ohio EPA, in accordance with OAC Rule 3745-31-03. The PBR required Respondent to comply with the requirements for Stage II vapor control systems as specified in OAC Rule 3745-21-09(DDD).

3. 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. OAC Rule 3745-21-09(DDD) was adopted by the Director pursuant to ORC Chapter 3704.

4. OAC Rule 3745-21-09(DDD)(1)(b) states, in part, that no owner or operator of a subject GDF may cause, allow, or permit the transfer of gasoline from a stationary tank at a GDF into a motor vehicle unless a vapor control system is installed, operated, and maintained in accordance with the manufacturer's specifications and the applicable California Air Resources Board ("CARB") certification, and is free from defect.

5. OAC Rule 3745-21-09(DDD)(1)(c) states, in part, that no owner or operator of a subject GDF may cause, allow, or permit the transfer of gasoline from a stationary tank at a GDF into a motor vehicle unless the vapor control system successfully passes the testing requirements contained in OAC Rule 3745-21-09(DDD)(2).

6. OAC Rule 3745-21-09(DDD)(2)(f) requires the owner or operator of a GDF to perform and comply with any vapor control system tests specified in the applicable CARB certification. As part of the required CARB testing for the above-mentioned GDF, an air-to-liquid ("A/L") ratio test and a static leak test are required to be performed annually and any fueling point not capable of demonstrating compliance with the performance standards of the A/L ratio test is deemed to be defective and is required to be removed from service.

7. On January 2, 2008, Respondent attempted to conduct the annual Stage II compliance tests at this GDF. However, the static leak and A/L ratio tests were not performed due to leaking ATG caps. In addition, two hoses were crimped and flattened and needed to be replaced. Respondent was dispensing gasoline prior to and after the defects were identified. The failure to properly install, operate, and maintain the vapor control system and to successfully pass the testing requirements in OAC Rule 3745-21-09(DDD)(2) while causing, allowing, or permitting the transfer of gasoline from a stationary storage tank into a motor vehicle were violations of ORC § 3704.05(G) and OAC Rule 3745-21-09(DDD)(1)(b) and (c).

8. On January 16, 2008, Respondent conducted a retest at this GDF. The static leak test passed but dispensers 3 and 4 failed the A/L ratio test due to the vacuum pump not working. Respondent was dispensing gasoline prior to and after the failed the A/L ratio test. The failure to properly install, operate, and maintain the vapor control system and to successfully pass the testing requirements in OAC Rule 3745-21-

09(DDD)(2) while causing, allowing, or permitting the transfer of gasoline from a stationary storage tank into a motor vehicle were violations of ORC § 3704.05(G) and OAC Rule 3745-21-09(DDD)(1)(b) and (c). On June 2, 2008, Respondent conducted and passed an A/L ratio retest for dispensers 3 and 4.

9. On March 12, 2009, Respondent attempted to conduct the annual Stage II compliance tests at this GDF. The static leak and A/L ratio tests were not performed due to the poor condition of several nozzles and because the wrong nozzles were being used on all the dispensers at this GDF. Respondent was dispensing gasoline prior to and after the defects were identified. The failure to properly install, operate, and maintain the vapor control system and to successfully pass the testing requirements in OAC Rule 3745-21-09(DDD)(2) while causing, allowing, or permitting the transfer of gasoline from a stationary storage tank into a motor vehicle were violations of ORC § 3704.05(G) and OAC Rule 3745-21-09(DDD)(1)(b) and (c).

10. On April 7, 2009, Respondent conducted a retest at this GDF. The static leak test passed but dispenser 4 failed the A/L ratio test due to the vacuum pump not working. Respondent was dispensing gasoline prior to and after the failed the A/L ratio test. The failure to properly install, operate, and maintain the vapor control system and to successfully pass the testing requirements in OAC Rule 3745-21-09(DDD)(2) while causing, allowing, or permitting the transfer of gasoline from a stationary storage tank into a motor vehicle were violations of ORC § 3704.05(G) and OAC Rule 3745-21-09(DDD)(1)(b) and (c). On June 8, 2009, Respondent conducted and passed an A/L ratio retest for dispenser 4.

11. By letter dated September 9, 2009, Ohio EPA notified Respondent of the violations referenced in Finding Nos. 7, 8, 9, and 10 of these Orders.

12. 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 to be derived from such compliance.

## V. ORDERS

The Director hereby issues the following Orders:

1. For the next two ozone seasons (April 1, 2011 – October 31, 2011 and April 1, 2012 – October 31, 2012), starting two weeks prior to the start of the ozone season, i.e., by March 15, 2011 and March 15, 2012, and continuing until October 31, 2011 and October 31, 2012, respectively, Respondent shall conduct weekly inspections of the Stage II vapor control system, checking for leaks, malfunctions or other damage to the system and shall keep records of these inspections and any repairs made. The inspections shall be recorded in an inspection log or checklist. Copies of the inspection logs or checklists shall be submitted to Ohio EPA during the middle and at the end of each ozone season. Specifically, copies of the weekly inspection records for the period

from March 15 through July 31 shall be submitted by August 14 of that year. Copies of the weekly inspection records for August 1 through October 31 shall be submitted by November 14 of that year.

2. For the next two ozone-producing seasons (i.e., April 1, 2011 – October 31, 2011 and April 1, 2012 – October 31, 2012), Respondent shall perform static leak and A/L ratio tests prior to the beginning (during March) of each ozone season and during August of each ozone season. Respondent shall notify Ohio EPA of such testing at least fourteen (14) days prior to any test. The results of these tests shall be submitted to Ohio EPA within fourteen (14) days after completion of the tests.

3. Respondent shall pay the amount of seven thousand dollars ($7,000) 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 checks made payable to "Treasurer, State of Ohio" for five thousand six hundred dollars ($5,600) of the total amount, which shall be paid in installments per the following schedule:

a. Within one hundred and eighty (180) days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of eight hundred dollars ($800);

b. Within two hundred and seventy (270) days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of eight hundred dollars ($800);

c. Within three hundred and sixty (360) days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of eight hundred dollars ($800);

d. Within four hundred and fifty (450) days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of eight hundred dollars ($800);

e. Within five hundred and forty (540) days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of eight hundred dollars ($800);

f. Within six hundred and thirty (630) days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of eight hundred dollars ($800); and

g. Within seven hundred and twenty (720) days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of eight hundred dollars ($800).

The official checks shall be submitted to Brenda Case, or her successor, together with a letter identifying the Respondent, to:

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

4. In lieu of paying the remaining one thousand four hundred dollars ($1,400) of the civil penalty, Respondent shall fund a Supplemental Environmental Project ("SEP") by making a contribution in the amount of $1,400 to Ohio EPA's Clean Diesel School Bus Program Fund (Fund 5CD0). Respondent shall make payment on or within ninety (90) days after the effective date of these Orders by tendering an official check made payable to "Treasurer, State of Ohio" for $1,400. The official check shall be submitted to Brenda Case, or her successor, together with a letter identifying the Respondent and Fund 5CD0, to the above-stated address.

5. A copy of each of the above checks 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, Ohio 43216-1049

6. Should Respondent fail to fund the SEP within the required time frame set forth in Order 4, Respondent shall immediately pay to Ohio EPA $1,400 of the civil penalty in accordance with the procedures in Order 3.

## 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 the purposes of these Orders, a responsible official is a principal executive officer of at least the level of vice president or his duly authorized representative.

## 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

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

Ohio EPA, Northeast District Office
2110 East Aurora Rd.
Twinsburg, Ohio 44087
Attn: Tim Fischer

and to:

Ohio Environmental Protection Agency
Lazarus Government Center
Division of Air Pollution Control
50 West Town Street, Suite 700
Columbus, Ohio 43216-1049
Attn: Tom Kalman

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.

**ORDERED AND AGREED:**

**Ohio Environmental Protection Agency**

Chris Korleski
Director

Date 5/21/10

**AGREED:**

**Pure Gas Incorporated**

Signature

Date 5-5-10

IMRAN NAZIR.
Printed or Typed Name

PRESIDENT
Title