

BEFORE THE  
OHIO ENVIRONMENTAL PROTECTION AGENCY

OHIO E.P.A.  
JUL 26 2011

ENTERED DIRECTOR'S JOURNAL

In the Matter of:

Rollin Cooke  
400 Water Street  
Chardon, Ohio 44024

: 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.

**PREAMBLE**

It is agreed by the parties hereto as follows:

By: [Signature] Date: 7-26-11

**I. JURISDICTION**

These Director's Final Findings and Orders ("Orders") are issued to Rollin Cooke ("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 facilities 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 regulations promulgated thereunder.

**IV. FINDINGS**

The Director of Ohio EPA makes the following findings:

1. Respondent owns and operates three gasoline dispensing facilities ("GDFs") located at 9861 Johnnycake Ridge Road, Concord Township, Lake County, Ohio (Concord Sunoco, Facility ID #0243001266); 400 Water Street, Chardon, Ohio (Cooke's Car Care, Inc., Facility ID #0228002011); and 12388 Mayfield Road, Chardon, Ohio (Munson Corners Sunoco, Facility ID #0228000317). These GDFs are subject to the requirements of Ohio Administrative Code ("OAC") Rule 3745-21-09(DDD) concerning Stage II vapor control systems.

2. 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.

3. OAC Rule 3745-21-09(DDD)(1)(b) states, in part, that no owner or operator of a 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.

4. OAC Rule 3745-21-09(DDD)(1)(c) states, in part, that no owner or operator of a 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).

5. OAC Rule 3745-21-09(DDD)(2)(d) requires, in part, the owner or operator of a GDF to perform and demonstrate compliance with the dynamic pressure performance test at intervals not to exceed five years.

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 GDFs, 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. OAC Rule 3745-21-09(DDD)(3)(a)(i) through (vi) states, in part, that any owner or operator of a gasoline dispensing facility subject to the requirements of paragraph (DDD)(1) shall maintain records of the quantity of gasoline delivered to the facility during each calendar month; the results of any Stage II tests performed; a log of the date and description of all repair and maintenance work performed; copies of the most recent permit to operate application submitted and permit-to-operate ("PTO") issued by Ohio EPA; and documentation demonstrating proof of attendance and completion of training required by Ohio EPA for the operator or local manager of the GDF.

#### **Concord Sunoco**

8. On April 1, 1994, a PTO was issued to former owner, Concord Citgo, for this GDF. This PTO and OAC Rule 3745-21-09(DDD) required Concord Citgo to comply with the requirements for Stage II vapor control systems at this facility. On April 1, 1997, the PTO for this GDF expired. Ownership of this GDF was transferred to Respondent around April of 2006, and Respondent failed to submit a renewal PTO application or Permit-by-Rule ("PBR") notification form as identified in OAC Chapter 3745-31 to Ohio EPA, in violation of OAC Rules 3745-31-02, former 3745-35-02, and ORC § 3704.05(G). On September 15, 2010, Respondent submitted, to Ohio EPA, a PBR notification form for this GDF.

9. On October 23, 2007, Respondent conducted and passed an annual Stage II compliance test at this GDF; however, at the time of this test, Respondent failed to demonstrate proof of attendance and completion of training required by Ohio EPA for the operator or local manager of this GDF, in violation of OAC Rule 3745-21-09(DDD)(3)(a)(vi) and ORC § 3704.05(G). By letter dated November 1, 2007, Ohio EPA notified Respondent of this violation.

10. By letter dated July 20, 2009, Ohio EPA notified Respondent that it had failed to conduct the 2008 and 2009 annual Stage II static leak and A/L ratio tests, as well as the five-year dynamic pressure performance test, while causing, allowing, or permitting the transfer of gasoline from a stationary storage tank into a motor vehicle, in violation of OAC Rules 3745-21-09(DDD)(1)(c), (2)(d) and (2)(f) and ORC § 3704.05(G).

11. On October 28, 2009, Ohio EPA conducted an inspection at this GDF to determine compliance with the Stage II annual static leak, A/L ratio and dynamic pressure performance tests at this GDF. After several hours of performing maintenance work, Respondent passed the Stage II testing. During this inspection, Ohio EPA discovered that Respondent had failed to maintain records of: the quantity of gasoline delivered to the facility during each calendar month; the results of any Stage II tests performed; a log of the date and description of all repair and maintenance work performed; a copy of the most recent PTO issued by Ohio EPA; and documentation of the proof of attendance and completion of training required by Ohio EPA, in violation of OAC Rule 3745-21-09(DDD)(3)(a)(i) to (vi) and ORC § 3704.05(G).

12. On July 15, 2010, Respondent conducted and passed the 2010 Stage II compliance tests; however, Respondent still failed to maintain maintenance records, in violation of OAC Rule 3745-21-09(DDD)(3)(a)(iii) and ORC § 3704.05(G).

#### **Cooke's Car Care, Inc.**

13. Respondent operated this GDF from at least November of 2004 until September 15, 2010 without obtaining a PTO, PTIO or PBR, therefore, this facility was operating without a PTIO or PBR as identified in OAC Chapter 3745-31, in violation of OAC Rule 3745-31-02 and ORC § 3704.05(G).

14. After conducting a file review around July of 2009, Ohio EPA discovered that Respondent has failed to conduct the 2005, 2006, 2007, 2008 and 2009 annual Stage II static leak and A/L ratio tests, as well as the five-year dynamic pressure performance test, while causing, allowing, or permitting the transfer of gasoline from a stationary storage tank into a motor vehicle, in violation of OAC Rules 3745-21-09(DDD)(1)(c), (2)(d) and (2)(f) and ORC § 3704.05(G). By letter dated July 20, 2009, Ohio EPA notified Respondent of these violations and its regulatory obligations concerning Stage II compliance testing.

15. On October 27, 2009, Ohio EPA conducted an inspection at this GDF to determine compliance with the Stage II annual static leak, A/L ratio and dynamic pressure performance tests at this GDF. After several hours of performing maintenance

work, Respondent passed the Stage II testing. During this inspection, Ohio EPA discovered that Respondent had failed to maintain records of: the quantity of gasoline delivered to the facility during each calendar month; the results of any Stage II tests performed; a log of the date and description of all repair and maintenance work performed; a copy of the most recent PTO issued by Ohio EPA; and documentation of the proof of attendance and completion of training required by Ohio EPA, in violation of OAC Rule 3745-21-09(DDD)(3)(a)(i) to (vi) and ORC § 3704.05(G).

16. On July 19, 2010, Respondent conducted and passed the 2010 Stage II compliance tests; however, Respondent failed to maintain records of maintenance work performed, in violation of OAC Rule 3745-21-09(DDD)(3)(a)(iii) and ORC § 3704.05(G).

### **Munson Corners Sunoco**

17. On October 4, 2006, Respondent was issued a PBR for this GDF which required Respondent to comply with the Stage II vapor control system requirements in OAC Rule 3745-21-09(DDD). In or about July of 2009, after conducting a file review, Ohio EPA discovered that Respondent has failed to conduct 2008 and 2009 annual Stage II static leak and A/L ratio tests, as well as the five-year dynamic pressure performance test, while causing, allowing, or permitting the transfer of gasoline from a stationary storage tank into a motor vehicle, in violation of OAC Rules 3745-21-09(DDD)(1)(c), (2)(d) and (2)(f) and ORC § 3704.05(G). By letter dated October 16, 2009, Ohio EPA notified Respondent of these violations. On February 16 and July 19, 2010, Respondent conducted and passed the Stage II compliance tests.

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 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. Within sixty (60) days from the effective date of these Orders, Respondent shall submit documentation, to Ohio EPA, demonstrating that Respondent is maintaining a log, at Concord Sunoco, Cooke's Car Care, Inc. and Munson Corners Sunoco, of the date and description of all repair and maintenance work performed in accordance with OAC Rule 3745-21-09(DDD)(3)(a)(iii).

2. For the next two ozone seasons (April 1, 2012 – October 31, 2012 and April 1, 2013 – October 31, 2013), starting two weeks prior to the start of the ozone season, i.e., by March 15, 2012 and March 15, 2013, and continuing until October 31, 2012 and October 31, 2013, respectively, Respondent shall conduct weekly inspections of the Stage II vapor control systems at Concord Sunoco, Cooke's Car Care, Inc. and Munson Corners Sunoco, 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.

3. By July 15, 2011, Respondent shall demonstrate that the Stage II vapor control systems at Concord Sunoco, Cooke's Car Care, Inc. and Munson Corners Sunoco are operating correctly by conducting and passing the 2011 annual static leak and A/L ratio tests. 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.

4. For the next two ozone-producing seasons (i.e., April 1, 2012 – October 31, 2012 and April 1, 2013 – October 31, 2013), Respondent shall perform static leak and A/L ratio tests at Concord Sunoco, Cooke's Car Care, Inc. and Munson Corners Sunoco 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 within 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.

5. By July 15, 2011, Respondent shall pay the amount of twenty-five thousand dollars (\$25,000) in settlement of Ohio EPA's claims for civil penalties, which may be assessed pursuant to ORC Chapter 3704. Payment to Ohio EPA shall be made by an official check made payable to "Treasurer, State of Ohio" for twenty thousand dollars (\$20,000) of the total amount. 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

6. In lieu of paying the remaining five thousand dollars (\$5,000) of the civil penalty, Respondent shall fund a Supplemental Environmental Project ("SEP") by making a contribution in the amount of \$5,000 to Ohio EPA's Clean Diesel School Bus Program Fund (Fund 5CD0). By July 15, 2011, Respondent shall make the payment by tendering an official check made payable to "Treasurer, State of Ohio" for \$5,000. 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.

7. A copy of each of the above checks shall be sent to Thomas Kalman, Acting 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

8. Should Respondent fail to fund the SEP within the required time frame set forth in Order 6, Respondent shall immediately pay to Ohio EPA \$5,000 of the civil penalty in accordance with the procedures in Order 5.

#### **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 facilities.

#### **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: Thomas 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**

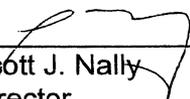
The effective date of these Orders is the date these Orders are entered into the Ohio EPA Director's journal.

**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**

  
\_\_\_\_\_  
Scott J. Nally  
Director

7/12/11  
\_\_\_\_\_  
Date

**AGREED:**

**Rollin Cooke**

  
\_\_\_\_\_  
Signature

6-5-11  
\_\_\_\_\_  
Date