



**Environmental
Protection Agency**

John R. Kasich, **Governor**
Mary Taylor, **Lt. Governor**
Scott J. Nally, **Director**

May 25, 2012

CERTIFIED MAIL

Mr. Jihad Rahman
President
J&S 15317 Euclid Incorporated,
d.b.a. Marbella Oil
15317 Euclid Avenue
Cleveland, Ohio 44112

Re: Final Findings and Orders for:
violations of Stage II vapor control system
requirements at the gasoline dispensing
facility located at 15317 Euclid Avenue in
Cleveland, OH

Dear Mr. Rahman:

Transmitted herewith are the Final Findings and Orders ("Orders") of the Director of Ohio EPA concerning the above-referenced matter.

Please note that the effective date of the Orders is the date that the Orders were entered into the Ohio EPA Director's journal, which is the date that is stamped on the first page of the Orders.

Sincerely,

Bruce D. Weinberg
Environmental Manager
Enforcement Section
Division of Air Pollution Control

BDW/jb

xc: Carol Hester, PIC
Jose W Byers, DAPC
Akia Smith, Fiscal Office (Agency #13)
Marcus Glasgow, Legal Office
Tom Kalman, DAPC
Jim Kavalec, DAPC
Linda Kimmy, CDAQ

2. CDAQ is the contractual agent for Ohio EPA in Cuyahoga County for the administration of Ohio's air pollution rules and laws.

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 September 8, 2008, Respondent conducted the annual Stage II compliance tests at this GDF. The static leak test passed but the A/L ratio test failed for dispensers 1 and 2. Respondent was dispensing gasoline prior to and after the failed A/L ratio test. The failure to successfully pass the testing requirements contained 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)(c). On November 6, 2008, Respondent passed an A/L ratio retest for dispensers 1 and 2.

8. On September 2, 2009, Respondent conducted the Stage II compliance tests at this GDF. The static leak test passed but the A/L ratio test failed for dispensers 4, 9, and 10. Respondent was dispensing gasoline prior to and after the failed A/L ratio test. The failure to successfully pass the testing requirements contained 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)(c). On October 8, 2009, Respondent passed an A/L ratio retest for dispensers 4, 9, and 10.

9. By letter dated February 16, 2010, CDAQ notified Respondent of the violations referenced in Finding Nos. 7 and 8 of these Orders.

10. On September 8, 2010 and September 8, 2011, Respondent conducted and passed the 2010 and 2011 annual Stage II compliance tests.

11. 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. Respondent shall pay the amount of eight thousand two hundred and thirty-two dollars (\$8,232) 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 six thousand five hundred and eighty-six dollars (\$6,586) of the total amount, which shall be paid in installments per the following schedule:

a. Within ninety (90) days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of one thousand six hundred and forty-six dollars (\$1,646);

b. Within one hundred and eighty (180) days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of one thousand six hundred and forty-six dollars (\$1,646);

c. Within two hundred and seventy (270) days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of one thousand six hundred and forty-six dollars (\$1,646); and

d. Within three hundred and sixty (360) days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of one thousand six hundred and forty-eight dollars (\$1,648).

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

2. In lieu of paying the remaining one thousand six hundred and forty-six dollars (\$1,646) of the civil penalty, Respondent shall fund a Supplemental Environmental Project ("SEP") by making a contribution in the amount of \$1,646 to Ohio EPA's Clean Diesel School Bus Program Fund (Fund 5CD0). Respondent shall make payment on or within thirty (30) days after the effective date of these Orders by tendering an official check made payable to "Treasurer, State of Ohio" for \$1,646. The

official check shall be submitted to Akia Smith, or her successor, together with a letter identifying the Respondent and Fund 5CD0, to the above-stated address.

3. A copy of each of the above checks shall be sent to Bruce Weinberg, Environmental Manager, Enforcement Section, 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

4. Should Respondent fail to fund the SEP within the required time frame set forth in Order 2, Respondent shall immediately pay to Ohio EPA \$1,646 of the civil penalty in accordance with the procedures in Order 1.

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, 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:

Cleveland Division of Air Quality
75 Erieview Plaza, Suite 200
Cleveland, Ohio 44114
Attn: Linda Kimmy

and 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
Attn: Bruce Weinberg

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

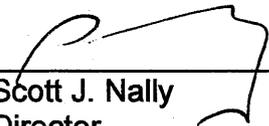
The effective date of these Orders is the date these Orders are entered into the Ohio EPA Director's journal.

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

5/12/12

Date

AGREED:

J & S 15317 Euclid Incorporated, d.b.a. Marbella Oil



Signature

5-10-2012

Date

Jihad Rahman

Printed or Typed Name

President

Title