

OHIO E.P.A.

OCT -6 2011

BEFORE THE  
OHIO ENVIRONMENTAL PROTECTION AGENCY

ENTERED DIRECTOR'S JOURNAL

In the Matter of:

Wayne Eliason  
d.b.a. D&D Marathon  
5336 Broadview Road  
Parma, Ohio 44134

: Director's Final Findings  
: and Orders  
:  
:  
:

and

Wayne Eliason  
d.b.a. Oakwood Sunoco  
22775 Broadway Avenue  
Oakwood Village, Ohio 44146

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 10/6/2011

**PREAMBLE**

It is agreed by the parties hereto as follows:

**I. JURISDICTION**

These Director's Final Findings and Orders ("Orders") are issued to Wayne Eliason, d.b.a. D&D Marathon and Oakwood Sunoco ("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 heirs and successors in interest liable under Ohio law. No change in ownership of the facilities (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 gasoline dispensing facilities ("GDFs") located at 5336 Broadview Road, in Parma, Cuyahoga County, Ohio (Facility ID# 1318456709) and 22775 Broadway Avenue, in Oakwood Village, Cuyahoga County, Ohio (Facility ID# 1318408424). On October 28, 2004, Ohio EPA issued Permit-to-Install No. 13-04426 for the Broadview Road GDF. On October 7, 2004, a Permit-to-Operate ("PTO") application was submitted to Ohio EPA's contractual agent for the Broadview Road GDF. On October 12, 2004, the former owner of the Broadway Avenue GDF submitted a PTIO application for the GDF. Subsequently, Respondent took over ownership of the Broadway Avenue GDF on or around March 10, 2010. These GDF are subject to the requirements of Ohio Administrative Code ("OAC") Rule 3745-21-09(DDD) concerning Stage II vapor control systems.
2. The Cleveland Division of Air Quality ("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 GDFs, air-to-liquid ("A/L") ratio tests and static leak tests 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.

### **5336 Broadview Road GDF**

7. On February 2, 2009, Respondent conducted the Stage II compliance tests at this GDF. During the February 2, 2009 Stage II compliance tests, the static leak test passed while the A/L ratio test failed for dispensers 1 and 4. Respondent was transferring gasoline into motor vehicles prior to and after the failed 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 February 12, 2009, Respondent passed an A/L ratio retest for dispensers 1 and 4.

8. On February 17, 2010, Respondent conducted the 2010 Stage II compliance tests at this GDF. Respondent passed the static leak and dynamic pressure performance tests but failed the A/L ratio test for the premium grade of gasoline on dispensers 1 through 8 due to a malfunctioning submersible pump and all three grades of gasoline on dispenser 4 due to a malfunctioning vacuum motor. Respondent bagged off dispensers 5 and 6 upon CDAQ's arrival but was transferring gasoline into motor vehicles prior to CDAQ's arrival and after the failed A/L ratio test on the other dispensers. 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 March 12, 2010, Respondent conducted and passed an A/L ratio retest for all dispensers. By letters dated February 25 and March 17, 2010, CDAQ notified Respondent of the aforementioned violations.

9. On August 31, 2011, Broadview Marathon, d.b.a. 5336 Broadview Rd. Inc. submitted a PBR ownership notification to CDAQ which indicated that it had purchased this GDF from Respondent.

### **22775 Broadway Avenue GDF**

10. On May 31, 2011, CDAQ conducted an inspection of this GDF and determined that Respondent had failed to perform the 2010 annual Stage II compliance tests, in violation of ORC § 3704.05(G) and OAC Rules 3745-21-09(DDD)(2)(f). By letter dated June 8, 2011, CDAQ notified Respondent of this violation.

11. On June 23, 2011, Respondent conducted and passed static leak and A/L ratio tests for this GDF.

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. Within thirty (30) days from the effective date of these Orders, Respondent shall submit a permit-by-rule notification to the CDAQ for the 22775 Broadway Avenue GDF in accordance with OAC Rule 3745-31-03(A)(4)(a).
2. For the next two ozone-producing seasons (i.e. 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 system at the 22775 Broadway Avenue GDF, 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 CDAQ 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. 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 the 22775 Broadway Avenue GDF prior to the beginning (during March) of each ozone season and during August of each ozone season. Respondent shall notify CDAQ of such testing at least fourteen (14) days prior to any test. The results of these tests shall be submitted to CDAQ within fourteen (14) days after completion of the tests.
4. Respondent shall pay the amount of ten thousand dollars (\$10,000) 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 eight thousand dollars (\$8,000) of the total amount, which shall be paid in installments per the following schedule:
  - a. Within sixty (60) days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of two thousand dollars (\$2,000);
  - b. Within ninety (90) days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of two thousand dollars (\$2,000);
  - c. Within one hundred and twenty (120) days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of two thousand dollars (\$2,000); and

d. Within one hundred and fifty days (150) days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of two thousand dollars (\$2,000).

5. In lieu of paying the remaining two thousand dollars (\$2,000) of the civil penalty, Respondent shall fund a Supplemental Environmental Project ("SEP") by making a contribution in the amount of \$2,000 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 \$2,000. 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.

6. 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  
P.O. Box 1049  
Columbus, Ohio 43216-1049

7. Should Respondent fail to fund the SEP within the required time frame set forth in Order 5, Respondent shall immediately pay to Ohio EPA \$2,000 of the civil penalty in accordance with the procedures in Order 4.

## **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 signed and submitted by Respondent to Ohio EPA.

#### **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:

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  
P.O. Box 1049  
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**

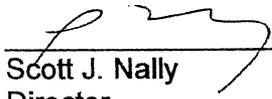
The effective date of these Orders is the date these Orders are entered into the Ohio EPA Director's journal.

**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

<sup>10</sup> / 4 / 11  
\_\_\_\_\_  
Date

**AGREED:**

**Wayne Eliason,  
d.b.a. D&D Marathon and Oakwood Sunoco**

  
\_\_\_\_\_  
Signature

SEPT 12, 2011  
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Date