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**IN THE COURT OF COMMON PLEAS FILED  
CUYAHOGA COUNTY, OHIO**

STATE OF OHIO EX REL. DEWINE  
Plaintiff

Case No: CV-14-8361078 JUL 28 A 9:12

Judge: JOSE A VILLANUEVA  
CLERK OF COURTS  
CUYAHOGA COUNTY

ZKS 130, INC., ET AL.  
Defendant

**JOURNAL ENTRY**

98 DISPOSED - FINAL

CONSENT ORDER.

FINAL.

O.S.J.  
COURT COST ASSESSED TO THE DEFENDANT(S).

Judge Signature

7/28/2016

Date

FILED

IN THE COURT OF COMMON PLEAS  
CUYAHOGA COUNTY, OHIO

2016 JUL 28 A 9:12

STATE OF OHIO ex rel. :  
MICHAEL DEWINE, :  
OHIO ATTORNEY GENERAL, :  
  
Plaintiff, :  
  
v. :  
  
ZKS 130, INC. et al., :  
  
Defendants. :

CASE NO. CV-14-836177  
CLERK OF COURTS  
JUDGE VILLANUEVA CUYAHOGA COUNTY

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CONSENT ORDER

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Plaintiff, the State of Ohio ("Plaintiff" or "State"), on relation of its Attorney General, Michael DeWine, and at the written request of the Director of the Ohio Environmental Protection Agency ("Ohio EPA"), filed an Amended Complaint seeking injunctive relief and civil penalties against Defendants ZKS 130, Inc.; Zayed Shehadeh; 3935 Gas, Inc.; and Faraj M. Mustafa for violations of R.C. Chapter 3704 and the rules adopted thereunder. Plaintiff resolved its claims for injunctive relief and civil penalties against Defendants ZKS 130, Inc. and Zayed Shehadeh by default judgment entered by the Court on March 22, 2016. Defendants 3935 Gas, Inc. and Faraj M. Mustafa ("3935 Defendants") have consented to the entry of this Order.

Therefore, without trial, admission, or determination of any issue of fact or law and with the consent of the Parties hereto, it is hereby **ADJUDGED, ORDERED, and DECREED** as follows:

**I. JURISDICTION AND VENUE**

1. This Court has jurisdiction over the Parties and the subject matter of this action pursuant to R.C. Chapter 3704. Venue is proper in this Court. Solely for the purposes of this

Consent Order and the underlying Complaint, the 3935 Defendants do not contest that the Complaint states a claim against the 3935 Defendants upon which relief can be granted. The 3935 Defendants shall not challenge this Court's jurisdiction to enter or enforce this Consent Order.

## II. PARTIES

2. Defendant 3935 Gas, Inc. is an Ohio corporation for profit with its principal place of business at 6293 Brighton Drive, North Olmsted, Cuyahoga County, Ohio 44070.

3. Defendant Faraj M. Mustafa is an Ohio resident whose address is 6293 Brighton Drive, North Olmsted, Cuyahoga County, Ohio 44070.

4. Each 3935 Defendant is a "person" as that term is defined in R.C. 1.59(C) and 3704.01(O).

5. The provisions of this Consent Order shall apply to and be binding upon the 3935 Defendants and, in accordance with Civ.R. 65(D), their officers, agents, servants, employees, successors in interest, and those persons in active concert or participation with them who receive actual notice of this Consent Order whether by personal service or otherwise.

6. If insolvency, bankruptcy, or other failure to pay amounts owed occurs, the 3935 Defendants shall pay the remaining unpaid balance of the total civil penalty in full.

## III. SATISFACTION OF LAWSUIT

7. The State alleges in its Complaint that the 3935 Defendants violated R.C. Chapter 3704 and Ohio Adm.Code Chapter 3745-21. The 3935 Defendants deny these allegations. The Parties have agreed to resolve the disputed issues in this matter without adjudication of any issue of fact or law. Entry into this Consent Order shall constitute full satisfaction of any civil liability of the 3935 Defendants and their successors in interest and assigns, including, but not limited to,

their respective members, heirs, legatees, devisees, beneficiaries, executors, administrators, and personal representatives for matters addressed in the State's Complaint and matters that occurred during the time period from the filing of the Complaint to the filing of this Consent Order.

8. Nothing in this Consent Order shall be construed to limit the State's authority to do the following:

- A. seek relief from the 3935 Defendants for claims or violations not referenced in the Complaint, except for claims or violations that occurred during the time period from the filing of the Complaint to the filing of this Consent Order;
- B. seek relief from the 3935 Defendants for claims or violations arising out of acts or omissions first occurring after the effective date of this Consent Order; or
- C. enforce this Consent Order, through a contempt action or otherwise, for violations of this Consent Order.

The 3935 Defendants retain all rights, defenses, and/or claims they may legally raise to the extent that the State seeks further relief from the 3935 Defendants in the future or in any action brought to enforce the terms and conditions of this Consent Order, except that the 3935 Defendants shall not assert and may not maintain any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim splitting, laches, or other defenses solely upon any contention that the claims raised by the State in subsequent proceedings were or should have been brought in the instant case.

9. Entry into this Consent Order, the Consent Order itself, or the taking of any action in accordance with the Consent Order does not constitute an admission of any liability, violation, wrongdoing, or misconduct on the part of the 3935 Defendants, their officers, agents, servants, employees, or managers.

10. Nothing in this Consent Order shall be construed to relieve the 3935 Defendants of their obligation to comply with all applicable federal, state, or local statutes, regulations, rules, or ordinances.

11. Except with regard to the signatories to this Consent Order, nothing in this Consent Order shall constitute or be construed as a satisfaction of lawsuit, release, or covenant not to sue regarding any claim alleged in the Complaint or any other claim or cause of action against any person, firm, trust, joint venture, partnership, corporation, association, or other entity not a signatory to this Consent Order for any liability such non-signatory may have arising out of or relating to the Facility, including, but not limited to, those identified in the Complaint.

12. The 3935 Defendants agree that each is jointly and severally liable for the obligations and requirements in this Consent Order, including, but not limited to, everything in Sections IV, V, and VI.

#### **IV. PERMANENT INJUNCTION**

13. The 3935 Defendants agree and are ordered and enjoined to comply with all of Ohio's environmental laws and rules, including, but not limited to, R.C. Chapter 3704 and the rules adopted thereunder, including, but not limited to, the applicable provisions of Ohio Adm.Code Chapter 3745-21.

#### **V. CIVIL PENALTY**

14. Pursuant to and in accordance with R.C. 3704.06, the 3935 Defendants agree and are ordered and enjoined to pay a total civil penalty of \$15,000 to the State. This civil penalty shall be paid according to the following conditions: The 3935 Defendants shall deliver 15 consecutive monthly installment payments with the first of these payments being delivered within one month of the date of entry of this Consent Order and the remaining payments each

being due no later than the 15th day of each succeeding month. All of the payments shall be made by cashier's check or certified check in the amount of \$1,000 drawn on an account with sufficient funds made payable to "Treasurer, State of Ohio" delivered to Scott Hainer, or his successor, Paralegal, Ohio Attorney General's Office, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215. The Ohio Attorney General's Office may notify the 3935 Defendants of any late payment. If the Ohio Attorney General's Office notifies the 3935 Defendants that any installment is late, then the total remaining balance, plus interest applicable per R.C. 131.02(D), is due immediately. Nothing in this Paragraph prevents the 3935 Defendants from paying more than \$1,000 for any installment.

15. The State reserves the right to file a certificate of judgment lien against the 3935 Defendants for the remaining unpaid balance of the total civil penalty, plus interest applicable per R.C. 131.02(D), without further notice if any installment is not paid according to the schedule in Paragraph 14. The 3935 Defendants shall not be permitted to claim a force majeure as an excuse for any untimely payment or partial payment of an amount less than that specified in Paragraph 14.

16. Because the obligations and requirements in this Consent Order are joint and several, if either of the 3935 Defendants files a petition for bankruptcy, the State reserves the right to file a certificate of judgment lien against the other non-filing Defendant for the remaining unpaid balance of the total civil penalty, plus interest applicable per R.C. 131.02(D), without further notice.

#### **VI. RETENTION OF JURISDICTION**

17. This Court shall retain jurisdiction over this action for the purposes of enforcing this Consent Order during the effective term thereof.

**VII. EFFECTIVE DATE**

18. This Consent Order shall be effective upon the date of its entry by the Court.

**VIII. COURT COSTS**

19. The 3935 Defendants are hereby ordered to pay all associated court costs of this action.

**IX. SIGNATORIES**

20. Each of the undersigned representatives of the Parties represents that he/she is fully authorized to enter into the terms and conditions of this Consent Order and legally bind the respective Party to this document.

21. Defendant 3935 Gas, Inc. shall inform Ohio EPA of any change in its Registered Agent's personal address, business address, or telephone number or the cessation of the business that is the subject of this action, and Defendant Faraj M. Mustafa shall inform Ohio EPA of any change in his personal address.

**X. ENTRY OF CONSENT ORDER AND JUDGMENT BY CLERK**

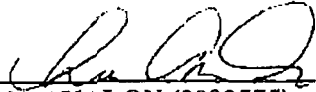
22. Pursuant to Civ.R. 58, upon signing of this Consent Order by the Court, the Clerk is directed to enter it upon the journal. Within three days of entering the judgment upon the journal, the Clerk is directed to serve upon all Parties notice of the judgment and its date of entry upon the journal in the manner prescribed by Civ.R. 5(B) and to note the service in the current docket.

**IT IS SO ORDERED.**

  
\_\_\_\_\_  
JUDGE VILLANUEVA  
Cuyahoga County Court of Common Pleas

7/28/2016  
\_\_\_\_\_  
Date

APPROVED:



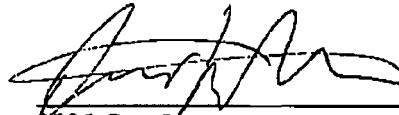
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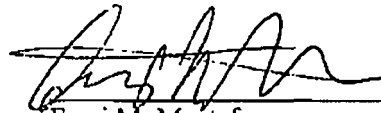


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3935 Gas, Inc.  
Faraj M. Mustafa, President



Faraj M. Mustafa  
In his individual capacity