

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

STATE OF OHIO, *ex rel.*
MICHAEL DEWINE, :
OHIO ATTORNEY GENERAL : CASE NO. CV 15 850116
 :
Plaintiff, : JUDGE HOLLIE L. GALLAGHER
 :
v. :
 :
3510 EAST 116TH, LLC, *et al.*, :
 :
Defendants. :

CONSENT ORDER AND FINAL JUDGMENT ENTRY

Plaintiff, the State of Ohio, on relation of its Attorney General Michael DeWine (“Plaintiff”/“the State”) and at the written request of the Director of Environmental Protection (“Director”), has filed a Complaint seeking injunctive relief and civil penalties from 3510 East 116th, LLC and Zahran Alqadan (collectively “Defendants”) for violations of Revised Code Chapter 3704 and Ohio Administrative Code rules promulgated thereunder. The State and Defendants, without admission of fact or liability, have consented to the entry of this Consent Order and Final Judgment Entry.

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

I. DEFINITIONS

1. As used in this Order, the following terms are defined:
 - a. “Defendants” means 3510 East 116th, LLC and Zahran Alqadan.

- b. St. Clair Gas, Inc. is a separate entity owned by Zahran Alqadan.
- c. "Director" means the Director of the Ohio Environmental Protection Agency ("Ohio EPA") or his designee.
- d. "CDAQ" means the Cleveland Division of Air Quality, the contractual agent of the Ohio EPA that enforces air pollution laws in Cuyahoga County.
- e. "Parties" means Plaintiff, the State of Ohio, and Defendants, 3510 East 116th, LLC and Zahran Alqadan.
- f. "Person" means an individual, public or private corporation, business trust, estate, trust, partnership, association, federal government or any agency thereof, municipal corporation or any agency thereof, political subdivision or any agency thereof, public agency, interstate body created by compact, any other entity, and other officers, agents, employees, attorneys, and/or those in active concert or participation with any of them.
- g. "Facility" means Defendants gas station at 3510 East 116th Street, Cleveland, Cuyahoga County, Ohio 44105.
- h. "State" means Plaintiff, the State of Ohio, including the Director, Ohio Environmental Protection Agency, or the Ohio Attorney General on behalf of the State, or any State entity.
- i. "Order" refers to this Consent Order.
- j. "Written" means a paper copy or a saved or stored electronic copy.

II. JURISDICTION AND VENUE

2. The Court has jurisdiction over the Parties and the subject matter of this action under R.C. Chapter 3704. The Complaint states a claim upon which relief can be granted. Venue is proper

in this Court. Defendants shall not challenge the Court's jurisdiction to enter or enforce this Consent Order.

III. PARTIES BOUND

3. Defendant 3510 East 116th, LLC, dba Union Sunoco, is an Ohio limited liability company with its principal place of business at 3510 East 116th Street, Cleveland, Ohio 44105.

4. Defendant Zahran Alqadan is an individual having an address of 3510 East 116th Street, Cleveland, Ohio 44105. Mr. Alqadan is the managing member of 3510 East 116th, LLC.

Comment [A1]: Please add Mr. Alqadan's permanent home address.

5. St. Clair Gas, Inc. is an Ohio corporation owned by Zahran Alqadan.

6. This Order shall apply to and are binding only upon Defendants, and, to the extent consistent with Civ. R. 65(D), on their agents, officers, employees, contractors, assigns, successors in interest, and those persons acting in concert, privity, or participation with Defendants who receive actual or constructive notice of this Order whether by personal service, by public record filed in the county land record, or otherwise. Defendants shall provide a copy of this Consent Order to any successor in interest and to each key employee, consultant or contractor employed to perform work referenced herein or to operate the Facility.

7. This Consent Order is in settlement and compromise of disputed claims and nothing in this Consent Order is to be construed as an admission of any facts or liability.

8. If insolvency, bankruptcy, or other failure occurs, Defendants must pay the remaining unpaid balance of the total civil penalty.

IV. SATISFACTION OF LAWSUIT AND RESERVATION OF RIGHTS

9. The Plaintiff alleges that Defendants violated air pollution control laws of the State of Ohio under R.C. Chapter 3704. Compliance with this Consent Order shall constitute full

satisfaction of any civil liability of Defendants to Plaintiff for the claims alleged in Plaintiff's Complaint up to the Court's entry of this Consent Order.

10. Outside of the allegations in the Complaint, St. Clair Gas, Inc. accrued four permit violations of the Ohio EPA Air Pollution Programs in 2013 and was invoiced an One Thousand Dollar (\$1,000.00) civil penalty for each violation, of which no payment has been received to date. St. Clair Gas, Inc. admits liability as to all four violations for a total of Four Thousand Six Hundred and Eighty-Six Dollars and Forty Cents (\$4,686.40): Four Thousand Dollars (\$4,000.00) civil penalty certified to the Ohio Attorney General; Four Hundred and Twenty-Six (\$426.00) collections costs; and Two Hundred and Sixty Dollars and Forty Cents (\$260.40) interest. Compliance with this Consent Order shall constitute full satisfaction of these outstanding civil penalties, which are Collections accounts #12067763, #12067764, #12067765, and #12067766.

11. Nothing in this Consent Order, including the imposition of stipulated civil penalties for violations of this Consent Order, shall limit the authority of the State of Ohio to:

- a. Seek any legal or equitable relief or civil penalties from Defendants or any other appropriate person for any claims or violations that occurred after filing the Complaint, and are not alleged in the Complaint;
- b. Seek any legal or equitable relief or civil penalties from Defendants or any other appropriate person for claims or violations not alleged in the Complaint;
- c. Seek any legal or equitable relief or civil penalties from Defendants or any other appropriate person for claims or conditions that occur or exist after the entry of this Consent Order;
- d. Enforce this Consent Order through a contempt action or otherwise seek relief for violations of this Consent Order; and/or

e. Take any action authorized by law against any appropriate person, including Defendants, to eliminate or mitigate conditions at the Site that may threaten public health or welfare or the environment.

12. This Consent Order does not waive, abridge, settle, compromise, or otherwise impact any other claims in law or equity that the State of Ohio or other persons may have against Defendants.

13. Except for the signatories to the Consent Order, nothing in this Consent Order shall constitute or be construed as satisfaction of civil liability, a covenant not to sue, and/or a release regarding the claims alleged, against any person not a signatory to this Consent Order for any liability such non-signatory(ies) may have arising out of matters alleged in the Complaint. Plaintiff also specifically reserves its right to sue any entity that is not a signatory to this Consent Order.

14. This Consent Order is not a permit, or a modification of any permit, under any federal, state, or local laws or regulations. Nothing in this Consent Order shall relieve Defendants of their obligations to comply with applicable federal, state, or local statutes, regulations, rules, or ordinances, and Defendants' compliance with this Consent Order shall be no defense to any action commenced pursuant to any such laws, regulations, or permits, except as set forth herein. Plaintiff does not, by their consent to the entry of this Consent Order, warrant or aver in any manner that Defendants' compliance with any aspect of this Consent Order will result in compliance with provisions of R.C. Chapter 3704 or with any other provisions of federal, state, or local laws, regulations, or permits.

15. Defendants shall not assert and/or maintain, any defense or claim of waiver, *res judicata*, collateral estoppel, issue preclusion, claim splitting, or other defenses based on any contention

that Plaintiff's claims in any subsequent judicial or administrative proceeding could or should have been brought in this case.

16. 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 V, VI, and VII.

V. PERMANENT INJUNCTION

17. Defendants are ordered and permanently enjoined to fully comply with R.C. Chapter 3704 and the rules promulgated thereunder, including, but not limited to, the applicable provisions of Ohio Adm.Code Chapter 3745-21.

VI. CIVIL PENALTY

18. Under R.C. 3704.06, Defendants are ordered and enjoined to pay a total civil penalty of Twelve Thousand Dollars (\$12,000.00) over two years, subject to the provisions set forth in Paragraphs 17 through 21.

19. The first penalty payment of Five Hundred Dollars (\$500.00) shall be delivered to the State as described in paragraph 18 within (30) days of the entry of this Consent Order. Defendants shall continue paying Five Hundred Dollars (\$500.00) every thirty days until the full Twelve Thousand Dollars (\$12,000.00) is paid in full.

20. Payments shall be delivered via certified check or money order payable to the order of "Treasurer, State of Ohio," together with a letter identifying Defendants, to Scott Hainer or his successor, Paralegal, Office of the Attorney General of Ohio, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215. The memorandum portion of the check, or some other prominent location on the transmittal letter or documentation, shall include a reference to "Cuyahoga County Common Pleas Case No. CV-15-850116."

21. In the event that either of the Defendants fails to timely remit any payment required by Paragraph 18 above, the entire Twelve Thousand Dollar (\$12,000.00) civil penalty, or the entire remaining portion thereof, shall immediately become due and owing and plus applicable interest in calculated in accordance with R.C. 131.02(D) and R.C. 5703.47 from the date of the entry of this Consent Order.

22. The State reserves the right to file a certificate of judgment lien against Defendants for the remaining unpaid balance of the total civil penalty, plus applicable interest per R.C. 131.02(D) under R.C. 5703.47, without further notice if any periodic payment is not paid according to the schedule in Paragraph 18 above. 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 18.

23. If either Defendant 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 applicable interest per Paragraph 19 above.

VII. COMPLIANCE NOT DEPENDENT ON GRANTS OR LOAN

24. Performance of the terms of this Consent Order by Defendants is not conditioned on the receipt of any private, Federal or State grants, loans, and/or funds. In addition, Defendants' performance is not excused by failing to obtain or any shortfall of any private, Federal or State grants, loans and/or funds or by the processing of any applications for the same.

VIII. RETENTION OF JURISDICTION

25. The Court will retain jurisdiction of this action for purposes of enforcing this Consent Order during the effective term thereof.

IX. ENTRY OF CONSENT ORDER AND JUDGMENT BY CLERK

26. Under 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: (a) 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 (b) note the service in the appearance docket. The failure of the Clerk to serve notice does not affect the validity of this Consent Order.

X. EFFECTIVE DATE

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

XI. COURT COSTS

28. Defendants are ordered to pay all court costs of this action.

XII. AUTHORITY TO ENTER INTO THE CONSENT ORDER

29. Each signatory represents and warrants he has been duly authorized to sign this document and is fully authorized to agree to its terms and conditions, and, in the case of a person signing on behalf of a corporate entity, may so legally bind the corporate entity to all terms and conditions in this document.

30. 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.

31. Zahran Alqadan shall inform the Ohio EPA of any change of his personal address and Defendant 3510 East 116th, LLC shall inform Ohio EPA of any change in its Registered Agents' address and business addresses or telephone numbers, or the cessation of the business that is the subject of this action.

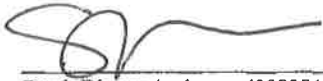
IT IS SO ORDERED.

Judge Hollie L. Gallagher
Cuyahoga County Court of Common Pleas

Date


APPROVED AND AGREED TO BY:

MICHAEL DEWINE
Ohio Attorney General



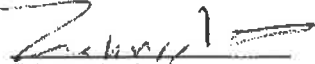
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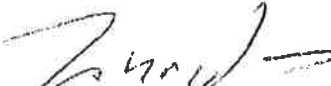


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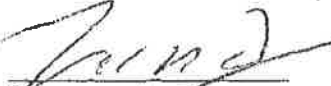
*Counsel for Defendants
3510 East 116th, LLC and Zahran Alqadan,
and St. Clair Gas, Inc.*



Zahran Alqadan
(In his individual capacity)



3510 East 116th, LLC
Zahran Alqadan, Owner



St. Clair Gas, Inc.
Zahran Alqadan, Owner