

COMMON PLEAS COURT
OCT 28 PM 12:50
IN THE COURT OF COMMON PLEAS
ALLEN COUNTY, OHIO

STATE OF OHIO ex rel.
RICHARD CORDRAY
OHIO ATTORNEY GENERAL,

and

PETROLEUM UNDERGROUND
STORAGE TANK RELEASE
COMPENSATION BOARD

Plaintiffs,

v.

AMERICAN PETROLEUM RETAIL, INC.
ET AL

Defendants.

CASE NO.: 2007 CV 0738

JUDGE REED

CONSENT ORDER

The Complaint and Amended Complaint in the above-captioned matter having been filed herein, and the Plaintiff State of Ohio, by its Attorney General, Richard Cordray ("State") and the Petroleum Underground Storage Tank Release Compensation Board (the "Board") (collectively "Plaintiffs"), and Defendants American Petroleum Retail, Inc. ("American"), Herbert Howard, Tammy Howard, The Four Howards LTD ("Four Howards"), Michael Howard, John Howard and Habib Howard (collectively "Defendants") having consented to the entry of this Order;

NOW THEREFORE, without trial of any issues of fact or law, without any admission of any issues of law, liability or fact, and upon the consent of the Parties hereto, it is **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 3737. Venue is proper in this Court. Solely for purposes of this Consent Order and the underlying Complaint and Amended Complaint, Defendants do not contest that the Complaint and Amended Complaint state claims upon which relief can be granted against Defendants.

II. PARTIES

2. The provisions of this Consent Order shall apply to and are binding upon the Defendants and its respective successors in interest and assigns, and others to the extent provided by Rule 65(D) of the Ohio Rules of Civil Procedure. The undersigned representatives of each party to this Consent Order certifies that he or she is fully authorized by the Party or Parties whom he or she represents to enter into the terms and conditions of the Consent Order and to execute and legally bind that party or parties to it.

3. Defendants shall provide a copy of this Consent Order to any person that Defendants employ to operate, close, and/or conduct post-closure care or any corrective action at the gas station located at 1250 Breese Road, Lima, Allen County, Ohio 45806 ("Facility") and the underground storage tank system ("UST") located at the Facility. Defendants shall ensure that any agreement made with any person Defendants employs to operate, close, conduct post-closure or any Corrective Action at the Facility, or for other services or work related to this

Consent Order, expressly provides that the services or work shall be performed in accordance with this Consent Order.

4. The obligation of Defendants to pay the amounts and implement the requirements of this Consent Order is joint and several. In the event of the insolvency, bankruptcy, or other failure of any Defendant to pay any required amount and/or implement any requirement, the remaining Defendants shall pay the amount and/or implement the requirement as required by this Consent Order.

III. SATISFACTION OF LAWSUIT AND EFFECT OF CONSENT ORDER

5. Plaintiffs have alleged that Defendants have violated R.C. Chapter 3737 and the rules promulgated thereunder.

6. Except as otherwise provided in paragraph 7 of this Consent Order, compliance with the terms of this Consent Order shall constitute full satisfaction of any civil and administrative liability of Defendants and its successors in interest and assigns for the claims alleged in the State's Complaint and Amended Complaint.

7. Nothing in this Consent Order shall be construed to limit the authority of Plaintiffs to seek relief from Defendants for: (A) claims or violations not referenced in the Complaint; (B) any violations arising out of acts or omissions first occurring after the effective date of this Consent Order; or (C) claims or violations under the Comprehensive Environmental Response Compensation and Liability Act, as amended, 42 U.S.C. §§9601 et seq. or R.C. 3734.20 through 3734.27 for any emergency, removal, remedial, corrective actions, or natural resource damages. Defendants retain all rights, defenses, and/or claims they may legally raise to the extent that Plaintiffs seek further relief from them in the future, or in any action brought to enforce the terms of this Consent Order, except that they 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, or other defenses based upon any contention that the claims raised by Plaintiffs in subsequent proceedings were or should have been brought in the instant case.

8. Entering into this Consent Order, the Consent Order itself, or the taking of any action in accordance with it and/or any work performed at the Facility to date does not constitute an admission of any liability, wrongdoing, or misconduct on the part of the Defendants, its officers, employees or representatives.

9. Nothing herein shall be construed to relieve Defendants of their obligation to comply with all applicable federal, state, or local statutes, regulations, or ordinances, including but not limited to applicable permit orphan approval requirements thereunder.

IV. PERMANENT INJUNCTION

10. Except as set forth in Section V, Defendants agree and are ordered and permanently enjoined to comply with R.C. Chapter 3737 and the rules promulgated thereunder.

V. INJUNCTIVE RELIEF

11. Within forty-five (45) days of entry of this Consent Order, Defendants shall, in compliance with Ohio Adm. Code 1301:7-9-05(G)(1) and 3737-1-04.1, obtain a valid certificate of coverage from the Board for the USTs at the Facility. Defendants shall maintain the coverage in compliance with the Board's statutes and rules as long as any Defendant owns and/or operates the Facility. If Defendants sell the Facility, Defendants shall notify the Board within thirty (30) days of the date of transfer and shall notify the new owner of the Board's annual tank fees and the transfer fee.

12. Within ten (10) days of receiving a valid certificate of coverage as required by the above referenced Paragraph, Defendants shall submit a copy of the certificate to Lori Stevens, or her successor, at the address set forth in Section VIII below.

13. Within ten (10) days of entry of this Consent Order, Defendants shall submit an annual registration application for the USTs at the Facility, in compliance with Ohio Adm. Code 1301:7-9-4(C)(1) and maintain the current registration for the USTs at the Facility for every year thereafter as long as any Defendant owns and/or operates the Facility.

14. Within ten (10) days of entry of this Consent Order, Defendants shall maintain daily product inventory controls at the Facility pursuant to Ohio Adm. Code 1301:7-9-08(F)(1).

15. Within ten (10) days of the entry of this Consent Order, Defendants shall inspect all release detection equipment for the piping and containment system of the UST system at the Facility in accordance with Ohio Adm. Code 1301:7-9-08(F)(4).

16. Within ninety (90) days of entry of this Consent Order, Defendants shall perform a closure assessment, in compliance with Ohio Adm. Code 1301:7-9-12(I) and (J), on the UST system that was out-of-service for more than twelve (12) months at the Facility.

17. Within one hundred and twenty (120) days of entry of this Consent Order, Defendants shall submit a closure report, in compliance with Ohio Adm. Code 1301:7-9-12(J), for the UST system that was out-of-service for more than twelve months at the Facility to Lori Stevens, or her successor, at the address set forth in Section VIII below.

18. Defendants shall correct any deficiencies in the closure report as directed by the Bureau of Underground Storage Tank Regulations ("BUSTR"). Upon approval of the closure report by BUSTR, Defendants shall perform, as directed by BUSTR, any corrective action work required by Ohio Adm. Code Chapter 1301:7-9-13.

19. Defendants agree and understand that reimbursement of corrective action costs from the Financial Assurance Fund under the certificate of coverage issued pursuant to paragraph 11 of this Consent Agreement shall not be valid for any release of petroleum suspected or confirmed during the closure assessment activities performed under paragraphs 16 and 18 of this Consent Order.

VI. CIVIL PENALTY

20. Pursuant to R.C. 3737.882, within two (2) days of entry of this Consent Order, Defendants are ordered and enjoined to pay a civil penalty of One Hundred Thousand Dollars (\$100,000.00) to the State. Such payment shall be made by delivering to Karen Pierson, Paralegal, or her successor, Office of the Attorney General, 30 E. Broad Street, 25th Floor, Columbus, Ohio 43215, a certified check or money order for the \$100,000.00, payable to the order of "Treasurer, State of Ohio."

21. Defendant shall pay to the Board the 2002 through 2008 program years' annual tank fees and late payment fees in the amount of Seventeen Thousand Eight Hundred Fifty-One Dollars (\$17,851). Defendant may make monthly payments if approved by the Board's Executive Director. If the Board and Defendants agree to monthly payments, the certificate of coverage issued pursuant to paragraph 11 of this Consent Agreement will be automatically revoked if Defendants payments are sixty (60) days in arrears. Further, Defendants shall pay all future annual tank fees on or before the 1st day of July of each succeeding program year.

VII. STIPULATED PENALTIES

22. In the event that Defendants fail to comply with any of the requirements of Sections IV, V and/or VI of this Consent Order, Defendants shall immediately and automatically

be liable for and shall pay a stipulated penalty that is meant to be coercive in nature in accordance with the following schedule:

- a. Defendants shall pay two hundred fifty dollars (\$250.00) per day for each day any requirement of this Consent Order is violated up to thirty (30) days;
- b. From thirty-one (31) days through ninety (90) days, Defendants shall pay five hundred dollars (\$500.00) per day for each day any requirement of this Consent Order is violated;
- c. After ninety (90) days, Defendants shall pay seven hundred and fifty dollars (\$750.00) per day for each day any requirement of this Consent Order is violated.

23. Stipulated penalties due under this Consent Order shall be paid by certified check or money order, payable to "Treasurer, State of Ohio" and mailed to Karen Pierson or her successor, Office Manager, at the Office of the Attorney General of Ohio, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215 within fifteen (15) days from the date the failure to meet the requirement of this Consent Order is cured.

VIII. NEW OWNERS AND OPERATORS OF THE FACILITY

24. When Morinda Petroleum, LLC ("Morinda") obtains legal title to the Facility, Morinda and its owners Jasdev Singh and Sukhdev Singh are ordered and enjoined to comply with all requirements of R.C. Chapter 3737 and the rules promulgated thereunder, including, but not limited to, certificate of coverage, UST registration, closure, and corrective action at the Facility.

The obligation for Morinda Jasdev Singh and Sukhdev Singh to comply with these requirements does not relieve Defendants from complying with all requirements set forth in this Consent Order, and Defendants and Morinda Jasdev Singh and Sukhdev Singh are jointly and severally liable to comply with all requirements of R.C. Chapter 3737 and the rules promulgated thereunder.

X. NOTICES

25. All documents required to be submitted under this Consent Order shall be submitted to the following, or their successor:

As to Plaintiff:

The Ohio Department of Commerce
Division of State Fire Marshal
Lori Stevens
8895 E. Main St.
Reynoldsburg, OH 43068

And

Petroleum Underground Storage Tank
Release Compensation Board
Starr J. Richmond, Executive Director
50 W. Broad Street, Suite 1500
Columbus, OH 43215

As to Defendants:

Khary Hanible
Kerger & Hartman, LLC
33 S. Michigan St.
Suite 100
Toledo, OH 43604

26. Either Party may change the name and/or address of its contact person(s) by sending written notice to the other Party.

XI. EFFECTIVE DATE

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

XII. COSTS

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

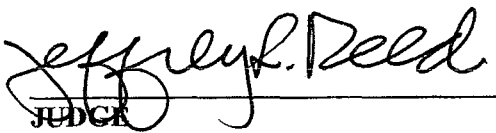
XIII. RETENTION OF JURISDICTION

29. This Court shall retain jurisdiction of this action for the purposes of making any Order or Decree, which it deems appropriate to carry out this Consent Order.

XIV. SIGNATORIES

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. This Consent Order may be signed in counterparts.

IT IS SO ORDERED



JUDGE
ALLEN COUNTY
COURT OF COMMON PLEAS

10/28/09

DATE

The Clerk of this Court shall forward a file stamped copy of this Judgment Entry by regular mail to each attorney of record and each party not represented by counsel. The fact of mailing shall be entered on the docket and charged as costs.

APPROVED BY:

RICHARD CORDRAY
OHIO ATTORNEY GENERAL


NICHOLAS J. BRYAN (0079570)

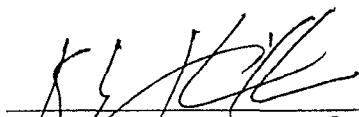
Assistant Attorney General
Environmental Enforcement Section
30 East Broad Street, 25th Floor
Columbus, Ohio 43215
Telephone: (614) 466-2766
Facsimile: (614) 466-1926

Attorney for Plaintiff
State

AMERICAN PETROLEUM
RETAIL INC.

By: 

Print Name: Habib H Howard
Title: Director


KHARY HANIBLE (0077095)

Kerger & Hartman, LLC
33 S. Michigan St.
Suite 100
Toledo, OH 43604

Attorney for American & Four Howards


CHERYL HAWKINSON (0024449)

Assistant Attorney General
Executive Agencies
30 East Broad Street, 26th Floor
Columbus, Ohio 43215
Telephone: (614) 466-2980
Facsimile: (866) 347-2547


Attorney for Plaintiff
Petroleum Underground Storage Tank
Release Compensation Board

THE FOUR HOWARDS, LTD

By: 

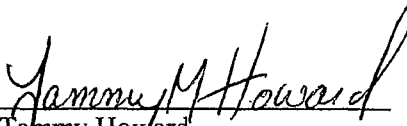
Print Name: Habib H Howard
Title: member

HERBERT HOWARD


Herbert Howard

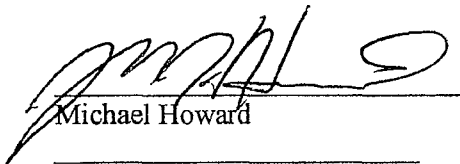
(In His Individual Capacity)

TAMMY HOWARD


Tammy Howard

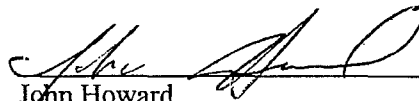
(In Her Individual Capacity)

MICHAEL HOWARD


Michael Howard


(In His Individual Capacity)

JOHN HOWARD


John Howard

(In His Individual Capacity)

HABIB HOWARD

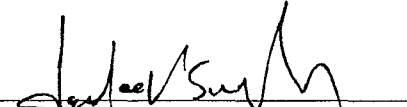

Habib Howard

(In His Individual Capacity)

MORINDA PETROLEUM, LLC

By: Sukhdev Singh
Print Name: SUKHDEV SINGH
Title: PRESIDENT

JASDEV SINGH


Jasdev Singh

(In His Individual Capacity)

Derek A. Younkman
DERICK YOUNKMAN (0062181)
101 N. ELIZABETH ST., SUITE 607
LIMA, OH 45801
Attorney for Morinda

SUKHDEV SINGH

Sukhdev Singh
Sukhdev Singh

(In Her Individual Capacity)