

IN THE COURT OF COMMON PLEAS
LUCAS COUNTY, OHIO

FILED
LUCAS COUNTY

2009 OCT 28 P 3:03

COMMON PLEAS COURT
BERNIE QUILTER
CLERK OF COURTS

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. G-4801-CI-0200704814-000

JUDGE GARY G. COOK

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, Habib Howard, Thomas Howard, and Dakroub & Howard LLC ("Dakroub") (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 stations located at the 2933 Monroe Street, Toledo, Lucas County, Ohio 43608 ("Site 1"), 3730 Monroe, Toledo, Lucas County, Ohio 43606 ("Site 2"), 750 E. Central, Toledo, Lucas County, Ohio 43608 ("Site 3"), and the 4706 N. Detroit Avenue, Toledo, Lucas County, Ohio 43612 ("Site 4") (collectively referred to as the "Facilities") and the underground storage tank systems ("USTs") located at each of the Facilities. Defendants shall ensure that any agreement

made with any person Defendants employs to operate, close, conduct post-closure or any corrective action at each of the Facilities 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 obligations of Defendants to pay the amounts and implement the requirements of this Consent Order are joint and several. In the event of 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 Facilities 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 or plan 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

UST SYSTEM LOCATED AT 2933 MONROE STREET, TOLEDO, OHIO

11. Within forty-five (45) days of entry of this Consent Order, Defendants American, Four Howards, Herbert Howard, Tammy Howard, Michael Howard, John Howard, and Habib Howard 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 located at Site 1. Defendants shall maintain the coverage in compliance with the Board's statutes and rules as long as any Defendant owns and/or operates Site 1. If Defendants sell Site 1, 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 Paragraph, Defendants American, Four Howards, Herbert Howard, Tammy Howard, Michael Howard, John Howard, and Habib Howard shall submit a copy of the certificate to Lori Stevens, or her successor, at the address set forth in Section VIII below.

13. Defendants American, Four Howards, Herbert Howard, Tammy Howard, Michael Howard, John Howard, and Habib Howard shall monitor their UST system at Site 1 at least every thirty days for a petroleum release in accordance with Ohio Adm. Code 1301:7-9-07(B)(1).

14. Within twenty (20) days of entry of this Consent Order, Defendants American, Herbert Howard, Tammy Howard, Four Howards, Michael Howard, John Howard, and Habib Howard shall submit an immediate corrective action report for the November 2004 discovery of free product on Site 1, in accordance with Ohio Adm. Code 1301:7-9-13(G)(2).

15. Within one hundred and twenty (120) days of entry of this Consent Order, Defendants American, Herbert Howard, Tammy Howard, Four Howards, Michael Howard, John Howard, and Habib Howard shall submit, to the Bureau of Underground Storage Tank Regulations ("BUSTR"), either a Tier 1 Evaluation Report or a Tier 1 Delineation Notification for the release of petroleum at Site 1 in accordance with Ohio Adm. Code 1301:7-9-13(H)(3).

16. After submission of the reports and/or notification required by Paragraph 15 above, Defendants American, Four Howards, Herbert Howard, Tammy Howard, Michael Howard, John Howard, and Habib Howard shall implement all necessary corrective actions at Site 1 in accordance with Ohio Adm. Code 1301:7-9-13 and as directed by BUSTR.

17. If any USTs at Site 1 have been out of service for greater than 12 months, at entry of this Consent Order, Defendants American, Herbert Howard, Tammy Howard, Four Howards, Michael Howard, John Howard, and Habib Howard, shall immediately place the USTs back into service, undergo a change in service, or have the USTs removed/abandoned in place. Regardless of which action is taken, a closure assessment must be conducted in compliance with Ohio Adm. Code 1301:7-9-12(I), and a Closure Report submitted to BUSTR within one hundred and twenty (120) days of entry of this Consent Order in compliance with Ohio Adm. Code 1301:7-9-12(J).

18. 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 Order, shall not be valid for any release of petroleum suspected or confirmed during the closure assessment activities performed under paragraph 17 of this Consent Order.

UST SYSTEM LOCATED AT 3730 MONROE, TOLEDO, OHIO

19. Within forty-five (45) days of entry of this Consent Order, Defendants American, Four Howards, Herbert Howard, Tammy Howard, Michael Howard, John Howard, and Habib Howard 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 located at Site 2. Defendants shall maintain the coverage in compliance with the Board's statutes and rules as long as any Defendant owns and/or operates Site 2. If Defendants sell Site 2, 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.

20. Within ten (10) days of receiving a valid certificate of coverage as required by the above Paragraph, Defendants American, Four Howards, Herbert Howard, Tammy Howard,

Michael Howard, John Howard, and Habib Howard shall submit a copy of the certificate to Lori Stevens, or her successor, at the address set forth in Section VIII below.

21. Within ten (10) days of entry of this Consent Order, Defendants American, Herbert Howard, Tammy Howard, Four Howards, Michael Howard, John Howard, and Habib Howard shall submit an annual registration application for all USTs at Site 2, including all current and past registration fees, and maintain the registration for the USTs at Site 2 for every year thereafter.

22. Within thirty (30) days of entry into this Consent Order, Defendants American, Herbert Howard, Tammy Howard, Four Howards, Michael Howard, John Howard, and Habib Howard shall implement an approved method of inventory control for the UST system at Site 2 pursuant to Ohio Adm. Code 1301:7-9-7(B)(2).

23. Effective upon the date of entry into this Consent Order, Defendants American, Herbert Howard, Tammy Howard, Four Howards, Michael Howard, John Howard, and Habib Howard shall inspect spill and overfill equipment for the UST system at Site 2 in accordance with Ohio Adm. Code 1301:7-9-8(B)(4).

24. Effective upon the date of entry into this Consent Order, Defendants American, Herbert Howard, Tammy Howard, Four Howards, Michael Howard, John Howard, and Habib Howard shall inspect the containment equipment for the UST system at Site 2 in accordance with Ohio Adm. Code 1301:7-9-8(E)(1).

25. Effective upon the date of entry into this Consent Order, Defendants American, Herbert Howard, Tammy Howard, Four Howards, Michael Howard, John Howard, and Habib Howard shall inspect the leak detection equipment for the UST system at Site 2 each month in accordance with Ohio Adm. Code 1301:7-9-8(F)(2).

26. Effective upon the date of entry into this Consent Order, Defendants American, Herbert Howard, Tammy Howard, Four Howards, Michael Howard, John Howard, and Habib Howard shall conduct annual line tests on the piping for the UST system at Site 2 in accordance with Ohio Adm. Code 1301:7-9-8(F)(4)(a).

27. If any USTs at Site 2 have been out of service for greater than 12 months, at entry of this Consent Order, Defendants American, Herbert Howard, Tammy Howard, Four Howards, Michael Howard, John Howard, and Habib Howard, shall immediately place the USTs back into service, undergo a change in service, or have the USTs removed/abandoned in place. Regardless of which action is taken, a closure assessment must be conducted in compliance with Ohio Adm. Code 1301:7-9-12(I) and a closure report submitted to BUSTR in compliance with Ohio Adm. Code 1301:7-9-12(J) within one hundred and twenty (120) days of entry of this Consent Order.

28. 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 Order shall not be valid for any release of petroleum suspected or confirmed during the closure assessment activities performed under paragraph 27 of this Consent Order.

UST SYSTEM LOCATED AT 750 E. CENTRAL, TOLEDO, OHIO

29. Within forty-five (45) days of entry of this Consent Order, Defendants American, Four Howards, Herbert Howard, Tammy Howard, Michael Howard, John Howard, and Habib Howard 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 located at Site 3. Defendants shall maintain the coverage in compliance with the Board's statutes and rules as long as any Defendant owns and/or operates Site 3. If Defendants sell Site 3, 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.

30. Within ten (10) days of receiving a valid certificate of coverage as required by the above Paragraph, Defendants American, Four Howards, Herbert Howard, Tammy Howard, Michael Howard, John Howard, and Habib Howard shall submit a copy of the certificate to Lori Stevens, or her successor, at the address set forth in Section VIII below.

31. Within ten (10) days of entry of this Consent Order, Defendants American, Herbert Howard, Tammy Howard, Four Howards, Michael Howard, John Howard, and Habib Howard shall submit an annual registration application for all USTs at Site 3, including all current and past registration fees, and maintain the registration for the USTs at Site 3 for every year thereafter.

32. Within thirty (30) days of entry into this Consent Order, Defendants American, Herbert Howard, Tammy Howard, Four Howards, Michael Howard, John Howard, and Habib Howard shall implement an approved method of inventory control for the UST system at Site 3 pursuant to Ohio Adm. Code 1301:7-9-7(B)(2).

33. Effective upon the date of entry into this Consent Order, Defendants American, Herbert Howard, Tammy Howard, Four Howards, Michael Howard, John Howard, and Habib Howard shall inspect spill and overfill equipment for the UST system at Site 3 in accordance with Ohio Adm. Code 1301:7-9-8(B)(4).

34. Effective upon the date of entry into this Consent Order, Defendants American, Herbert Howard, Tammy Howard, Four Howards, Michael Howard, John Howard, and Habib Howard shall inspect the containment equipment for the UST system at Site 3 in accordance with Ohio Adm. Code 1301:7-9-8(E)(1).

35. Effective upon the date of entry into this Consent Order, Defendants American, Herbert Howard, Tammy Howard, Four Howards, Michael Howard, John Howard, and Habib Howard shall inspect the leak detection equipment for the UST system at Site 3 each month in accordance with Ohio Adm. Code 1301:7-9-8(F)(2).

36. Effective upon the date of entry into this Consent Order, Defendants American, Herbert Howard, Tammy Howard, Four Howards, Michael Howard, John Howard, and Habib Howard shall conduct annual line tests on the piping for the UST system at Site 3 in accordance with Ohio Adm. Code 1301:7-9-8(F)(4)(a).

37. If any USTs at Site 3 have been out of service for greater than 12 months, Defendants American, Herbert Howard, Tammy Howard, Four Howards, Michael Howard, John Howard, and Habib Howard, shall immediately place the USTs back into service, undergo a change in service, or have the USTs removed/abandoned in place. Regardless of which action is taken, a closure assessment must be conducted in compliance with Ohio Adm. Code 1301:7-9-12(I) and a closure report submitted to BUSTR in compliance with Ohio Adm. Code 1301:7-9-12(J) within one hundred and twenty (120) days of entry of this Consent Order.

38. 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 Order, shall not be valid for any release of petroleum suspected or confirmed during the closure assessment activities performed under paragraph 37 of this Consent Order.

UST SYSTEM LOCATED AT 4706 N. DETROIT AVENUE, TOLEDO, OHIO

39. Within one hundred and eighty (180) days of entry into this Consent Order, Defendants American, Herbert Howard, Tammy Howard, Four Howards, Michael Howard, John Howard, and Habib Howard shall conduct a closure assessment and submit a closure assessment report for the removed USTs at Site 4 in accordance with Ohio Adm. Code 1301:7-9-12(I) and (J).

40. Subsequent to submission of the closure assessment report, Defendants American, Herbert Howard, Tammy Howard, Four Howards, Michael Howard, John Howard, and Habib Howard shall conduct any required further corrective action as required by Ohio Adm. Code 1301:7-9-13 and as instructed by BUSTR.

VI. CIVIL PENALTY

41. Pursuant to R.C. 3737.882, Defendants are ordered and enjoined to pay a total civil penalty in the amount of Six Hundred Fifty Thousand Dollars (\$650,000.00). The total civil penalty shall be paid in accordance with the following schedule:

- One Hundred Fifty Thousand Dollars (\$150,000.00) within seven (7) days of the entry of this Consent Order.
- One Hundred Thousand Dollars (\$100,000.00) within seven (7) months of the entry of this Consent Order.
- One Hundred Thousand Dollars (\$100,000.00) within eleven (11) months of the entry of this Consent Order.
- One Hundred Thousand Dollars (\$100,000.00) within fifteen (15) months of the entry of this Consent Order.

- One Hundred Thousand Dollars (\$100,000.00) within twenty (20) months of the entry of this Consent Order.
- One Hundred Thousand Dollars (\$100,000.00) within twenty-four (24) months of the entry of this Consent Order.

42. Such payments 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, certified checks or money orders for the appropriate amounts, payable to the order of "Treasurer, State of Ohio."

VII. BOARD FEES AND LATE FEES

43. Within two days of entry of the Consent Oder, Defendants shall submit the past due Board fees and late fees in the amount of Twenty Thousand Seven Hundred Fourteen Dollars and Ninety-One cents (\$20,314.91). In addition, Defendants shall submit the current 2009 program year per-tank fees in the amount of Thirty-Six Hundred Dollars (\$3,600) plus a late payment fee beginning in August 2009 of One Hundred Dollars (\$100) per tank, per month for each month the payment is not remitted, up to a maximum of One Thousand Dollars (\$1,000) per each UST located at Site 1 and Site 3. Defendant may make monthly payments if approved by the Board's Executive Director. If the Board and Defendants agree to monthly payments, the certificates of coverage issued pursuant to paragraphs 11, 19 and 29 of this Consent Order 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

44. 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.

45. Stipulated penalties due under this Consent Order shall be paid by certified check payable to "Treasurer, State of Ohio" and mailed to Karen Pierson or her successor, 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 is cured.

VIII. NOTICES

43. 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

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

X. EFFECTIVE DATE

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

XI. COSTS

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

XII. RETENTION OF JURISDICTION

47. 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.

XIII. SIGNATORIES

48. 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.

IT IS SO ORDERED



JUDGE GARY G. COOK
LUCAS COUNTY
COURT OF COMMON PLEAS

OCT 28 2009

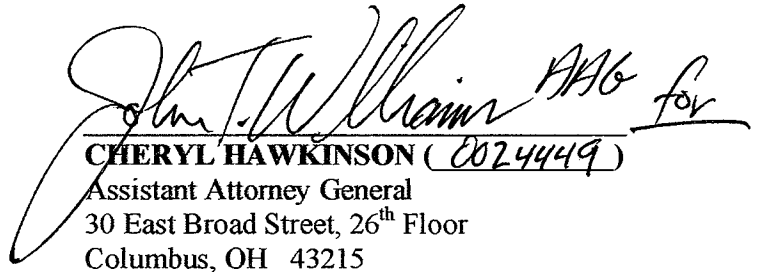
DATE

APPROVED BY:

RICHARD CORDRAY
OHIO ATTORNEY GENERAL



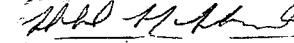
NICHOLAS J. BRYAN (0079570)
Assistant Attorney General
Environmental Enforcement Section
30 East Broad Street, 25th Floor
Columbus, Ohio 43215
Telephone: (614) 466-2766
Facsimile: (614) 466-1926
Attorney for Plaintiff State of Ohio



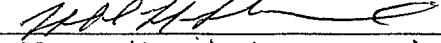
CHERYL HAWKINSON (0024449)
Assistant Attorney General
30 East Broad Street, 26th Floor
Columbus, OH 43215

Attorney for the Board

AMERICAN PETROLEUM
RETAIL, INC.

By: 
Print Name: Habib M. Howard
Title: Director

THE FOUR HOWARDS, LTD

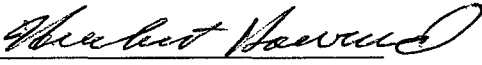
By: 
Print Name: Habib M. Howard
Title: member



KHARY HANIBLE (0077095)

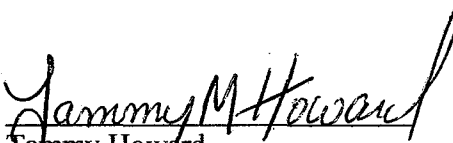
Kerger & Hartman, LLC
33 S. Michigan St.
Suite 100
Toledo, OH 43604
*Attorney for American, Four Howards Ltd., &
Dakroub & Howard, LLC, Petroleum Retail, Inc.*

HERBERT HOWARD


Herbert Howard

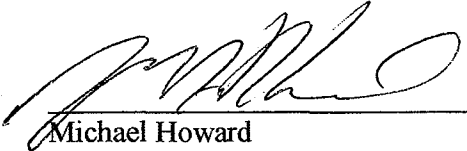
(In His Individual Capacity)

TAMMY HOWARD


Tammy Howard

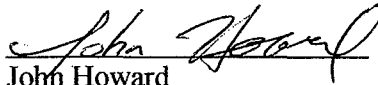
(In Her Individual Capacity)

MICHAEL HOWARD


Michael Howard

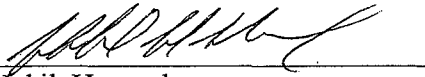
(In His Individual Capacity)

JOHN HOWARD


John Howard


(In His Individual Capacity)

HABIB HOWARD

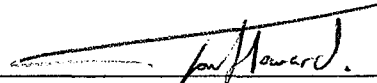

Habib Howard

(In His Individual Capacity)

DAKROUB & HOWARD LLC

By: 
Print Name: Habib H. Howard
Title: member

THOMAS HOWARD


Thomas Howard

(In His Individual Capacity)