

TRACKING NO.:

**BEFORE THE OHIO DEPARTMENT OF COMMERCE
DIVISION OF STATE FIRE MARSHAL**

IN THE MATTER OF:

PEACHGROVE MARKET
5968 Springdale Road
Cincinnati, Ohio
Hamilton County

State Fire Marshal's Revised
Final Findings and Orders

Respondent,

Heritage Management, d/b/a Westbrook Enterprises, Ltd
Peachgrove Market

I. JURISDICTION

These Revised Final Findings and Orders ("Orders") are hereby issued by the State Fire Marshal ("Fire Marshal"), by and through the State Fire Marshal's Bureau of Underground Storage Tank Regulations ("BUSTR"), to Heritage Management d/b/a Westbrook Enterprises (the "Respondent") pursuant to the authority vested in the State Fire Marshal under sections 3737.88 and 3737.882 of the Ohio Revised Code ("ORC").

II. PARTIES

These Orders shall apply to and be binding upon the Respondent as the owner of the underground storage tank (UST) system located at 5968 Springdale Road, Cincinnati, Hamilton County, which property is known as Peachgrove Market (the "Site"), and the Respondent's agents, servants, assigns, and successors in interest. No changes in ownership relating to the Site will in any way alter the Respondent's responsibilities under these Orders. Prior to the termination of these Orders, Respondent is hereby ordered to provide a copy of these Orders to any prospective or successor owner prior to any transfer of ownership of the Site. The Respondent's obligations under these Orders may only be modified by the written agreement of the parties.

III. DEFINITIONS

Unless otherwise stated, all terms used in these Orders shall have the same meaning as used in ORC Chapter 3737 and the regulations promulgated under that chapter.

IV. FINDINGS OF FACT

The State Fire Marshal has determined the following findings of fact:

1. The Site is located at 5968 Springdale Road, Cincinnati, Hamilton County, Ohio.

2. The Site contains four (4) "underground storage tanks" ("USTs") and is an "underground storage tank system" as those terms are defined in ORC 3737.87(P) and (Q), and are used to store a "regulated substance" as that term is defined in ORC 3737.87(L) and Ohio Administrative Code ("OAC") 1301:7-9-02(B)(49). The Site includes two (2) 8,000 gallon steel gasoline tanks, one (1) 6,000 gallon steel gasoline tank and one (1) 2,000 gallon steel kerosene tank.
3. Respondent is the "owner" and/or "operator" of the UST systems as those terms are defined in ORC 3737.87 (G) and (H).
4. Respondent is a "person" as that term is defined in ORC 3737.87(I) and OAC 1301:7-9-02(B)(43).
5. On June 29, 2006, BUSTR inspected Respondent's UST systems on the Site. Based on BUSTR's Site inspection and records review, the State Fire Marshal determined Respondent to be in violation of the following sections of the OAC because:
 - a. Respondent failed to test the cathodic protection system every thirty six (36) months as required by OAC 1301:7-9-08(C)(2)(a).
 - b. Respondent failed to annually test the line leak detectors as required by OAC 1301:7-9-08(F)(4)(a).
 - c. Respondent failed to annually perform the tightness test of the pressure piping as required by OAC 1301:7-9-08(F)(4)(b).
6. The State Fire Marshal issued Final Findings and Orders on May 23, 2007 which required Respondent to cure the violations and pay a civil penalty in the amount of \$63,040 (the "2007 FFOs").
7. Respondent timely appealed the 2007 FFOs to the Environmental Review Appeals Commission.
8. Respondent has corrected the violations pertaining to the UST systems at the Site.
9. Pursuant to a Joint Stipulation and Settlement Agreement filed on (date of Settlement Agreement Filing), the Respondent agrees to the issuance of these Orders by the Fire Marshal.

V. ORDERS

1. Respondent agrees to pay the sum of \$25,000 in settlement of the State Fire Marshal's claim for civil penalties.
2. The sum of \$25,000 shall be paid as follows: \$5,000 shall be paid by December 15, 2010. Thereafter, the remaining balance, being the sum of \$20,000, shall be paid in through monthly payments in the sum of \$416.67 commencing January 1, 2011 until paid in full. Such payments shall be made via certified check or money order and directed to Karen M. Pierson, or her successor, Ohio Attorney General, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215.

VI. TERMINATION

Respondent's obligations under these Orders shall automatically terminate upon full payment of the sum of \$25,000 by the Respondent as set forth in these Orders.

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, Respondent's UST systems at the Site.

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 or the Site.

IX. NOTICE

Unless otherwise indicated in these Orders, all documents demonstrating compliance with these Orders and all other documents required under these Orders are to be submitted to:

State Fire Marshal
Bureau of Underground Storage Tank Regulations
Attn: Enforcement Manager
8895 E. Main Street
P.O. BOX 687
Reynoldsburg, Ohio 43068
Case Tracking No. 41000057-V00001

or to such persons and addresses as the State Fire Marshal or BUSTR may otherwise specify in writing.

X. RESERVATION OF RIGHTS

Nothing contained herein shall be construed to prevent the State Fire Marshal from seeking legal or equitable relief to enforce the terms of these Orders or from taking other administrative, legal or equitable action as deemed appropriate and necessary, including seeking penalties against Respondent for noncompliance with these Orders.

Nothing contained herein shall be construed to prevent the State Fire Marshal from exercising its lawful authority to require Respondent to perform additional activities pursuant to ORC Chapter 3737 or any other applicable law in the future. Nothing in these Orders shall be construed to limit the authority of the State Fire Marshal to seek relief for violations not identified in the Findings of Fact section of these Orders.

XI. WAIVER

In order to resolve disputed claims, without admission of fact, violation or liability, and in lieu of further enforcement action by the State Fire Marshal 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, State Fire Marshal 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.

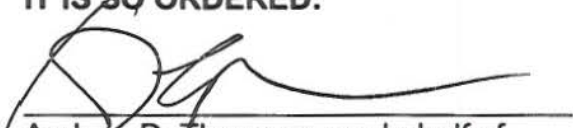
XII. EFFECTIVE DATE

The effective date of these Orders is the date the Orders are signed by the State Fire Marshal or his designee.

XIII. NOTIFICATION OF WAIVER OF APPEAL RIGHTS

These Orders are being issued as agreed in the Joint Stipulation and Settlement Agreement which resolved the appeal to the Environmental Review Appeals Commission, ERAC No. 316072, of the 2007 FFOs. As set forth in the Joint Stipulation and Settlement Agreement, Respondent waives any right to contest the lawfulness and/or reasonableness of the these Orders before the Environmental Review Appeals Commission, or any other agency, commission, or court of competent jurisdiction.

IT IS SO ORDERED:



Andrew D. Thompson on behalf of
Donald C. Cooper, Interim State Fire Marshal

12/6/10

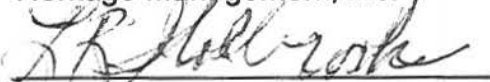
Date

CERTIFIED MAIL TO:

Heritage Management, Inc. d/b/a
Westbrook Enterprises Ltd.
1400 Fourth and Race Tower
105 West Fourth Street
Cincinnati, OH 45202

Agreed:

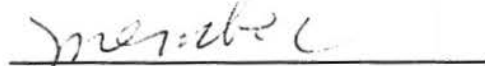
Heritage Management, Inc.



Signature



Printed or Typed Name



Title

Via regular U.S. mail to:

Brian M. Babb
Keating Muething & Klekamp PLL
One East Fourth Street
Suite 1400
Cincinnati, OH 45202-3752