

BEFORE THE
ENVIRONMENTAL REVIEW APPEALS COMMISSION
STATE OF OHIO

HERITAGE MANAGEMENT, INC.,	:	Case No. ERAC 316072
d/b/a Westbrook Enterprises,	:	
	:	
Appellant,	:	
	:	
	:	
	:	
	:	
MICHAEL P. BELL,	:	
STATE FIRE MARSHAL,	:	
	:	
Appellee.	:	

JOINT STIPULATION AND SETTLEMENT AGREEMENT

The parties to this appeal, Appellant, Heritage Management, Inc. d/b/a Westbrook Enterprises (“Heritage”) and Appellee, Donald C. Cooper, Interim State Fire Marshal (“Fire Marshal”), have agreed to resolve the above-captioned appeal according to the terms set forth in this Joint Stipulation and Settlement Agreement. In settlement of the above-captioned appeal, the parties stipulate and agree as follows:

I. STIPULATIONS

1. On May 23, 2007, the Fire Marshal issued Final Findings and Orders (the “2007 FFOs”) to Heritage for its property, known as Peachgrove Market, located at 5968 Springdale Street, Cincinnati, Ohio (the “Site”).
2. The Site is operated as a gas station with four underground storage tank (the “UST system”) containing regulated substances. Heritage has registered with the

Bureau of Underground Storage Tank Regulations (“BUSTR”) as the owner of the UST system at the Site.

3. The 2007 FFOs directed Heritage to perform certain UST release prevention actions for the UST system at the Site, as required by Ohio Adm. Code 1301:7-9-08.

4. The 2007 FFOs required the payment of a civil penalty in the sum of \$63,040 (the “Civil Penalty”).

5. Heritage timely filed a Notice of Appeal of the 2007 FFOs with the Environmental Review Appeals Commission. In the Notice of Appeal, Heritage challenged the terms and conditions of the 2007 FFOs.

6. The parties to this action have engaged in settlement discussions and an agreement has been reached between the parties to resolve this appeal.

II. SETTLEMENT AGREEMENT

WHEREAS, the parties wish to conclude these proceedings without the adjudication of any questions of fact or law by entering into the following Settlement Agreement:

1. Heritage agrees to comply with the applicable requirements of the Ohio Revised Code and Ohio Administrative Code regarding the ownership and/or operation of an UST system at the Site.

2. The Fire Marshal agrees to a settlement of its claim for a Civil Penalty in the sum of \$25,000. Heritage agrees to pay the sum of \$25,000 as follows: the sum of \$5,000 by December 15, 2010. Thereafter and commencing on the 1st day of January, 2011, Heritage shall pay the sum of \$416.67 on the first day of each month until the


remaining \$20,000 is paid in full. All amounts paid here under shall be delivered to the Office of the Attorney General, c/o Karen M. Pierson, or her successor, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215. All amounts due hereunder, including the initial payment, shall be made with a certified check or money order payable to the Fire Marshal.

3. Heritage agrees to file a Motion seeking voluntary dismissal with prejudice of this appeal within ten (10) days of the execution of this Stipulation and Settlement Agreement by the respective parties and the filing of this Stipulation and Settlement Agreement with the Environmental Review Appeals Commission.

4. Heritage waives any right to contest the lawfulness and/or reasonableness of the action provided for herein before the Environmental Review Appeals Commission, or any other agency, commission, or court of competent jurisdiction.

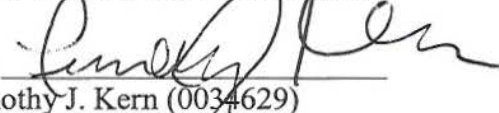
5. The entering of this Joint Stipulation and Settlement Agreement shall in no way be construed as an admission by either party as to the lawfulness or unlawfulness or the reasonableness or unreasonableness of the 2007 FFOs as originally issued.

HERITAGE MANAGEMENT, INC.

By: 
Brian M. Babb (0034139)
Keating Muething & Klekamp PLL
One East Fourth Street, Suite 1400
Cincinnati, Ohio 45202-0149

*Counsel for Appellant,
Heritage Management, Inc.*

RICHARD CORDRAY
OHIO ATTORNEY GENERAL

By: 
Timothy J. Kern (0034629)
Assistant Attorney General
Environmental Enforcement Section
30 East Broad Street, 25th Floor
Columbus, OH 43215

Counsel for Appellee, BUSTR