

**IN THE FRANKLIN COUNTY MUNICIPAL COURT
ENVIRONMENTAL DIVISION**

STATE OF OHIO, <i>ex rel.</i>	:	CASE NO. 2010 EVH 060308
MICHAEL DEWINE	:	
OHIO ATTORNEY GENERAL,	:	
Plaintiff,	:	JUDGE HALE
	:	
v.	:	CONSENT ORDER AND
	:	FINAL JUDGMENT ENTRY
HEARTLAND REFINERY GROUP, LLC,	:	
<i>et al.,</i>	:	
	:	
Defendants.	:	

The State of Ohio, on relation of its Attorney General (“Plaintiff”/“the State”), and at the written request of the Director of the Ohio Environmental Protection Agency (“Ohio EPA”), has filed a Complaint against Defendants Heartland Refinery Group, LLC, Kenneth E. Gornall, and William C. Snedegar (collectively “Defendants”) to enforce Ohio’s general nuisance statute, R.C. Chapter 3767, and Ohio’s air pollution control laws found in R.C. Chapter 3704 and the rules adopted thereunder. The Parties have consented to the entry of this Consent Order. Therefore, without the trial, admission, or determination of any issue of fact, law, or liability, and upon the consent of the Parties hereto, it is hereby ORDERED, ADJUDGED, and DECREED as follows:

I. DEFINITIONS

1. As used in this Order, the following terms are defined as follows:
 - a. “Defendants” means Heartland Refinery Group, LLC, Kenneth E. Gornall, and William C. Snedegar.

- b. "Director" means the Director of the Ohio EPA or his designee.
- c. "DSW" means Designer Shoe Warehouse located at 4150 East Fifth Ave., Columbus, Ohio 43219.
- d. "Facility" means the property and equipment located at 4001 East Fifth Avenue, Columbus, OH 43219-1812, identified by Ohio EPA as Facility ID 0125043205.
- e. "NCO" refers to NCO Financial Systems, Inc. located at 4000 East Fifth Ave., Columbus, Ohio 43219.
- f. "ODJFS" refers to the Ohio Department of Job and Family Services located at 4020 and 4200 East Fifth Ave., Columbus, Ohio 43219.
- g. "Order" refers to this Consent Order.
- h. "Permit" refers to Permit-to-Install No. P0105498 or Defendants' current legally effective air permit.
- i. "Study" refers to the final version of the written report required by the September 2, 2010 Journal Entry and Order that was submitted to the Parties and to the Court on March 11, 2011, and which is attached to this Consent Order as Exhibit A.
- j. "Written" means either a hard copy (i.e., on paper) or saved or otherwise stored in an electronic format.

II. JURISDICTION AND VENUE

2. This Court has jurisdiction over the subject matter of this action pursuant to R.C. Chapter 3704 and the rules adopted thereunder, as well as R.C. Chapter 3767. This Court has jurisdiction over the Parties. Venue is proper in this Court. The Complaint states a claim upon which relief can be granted.

III. PARTIES BOUND

3. The provisions of this Order shall apply to and be binding upon Plaintiff and Defendants, their agents, officers, employees, contractors, assigns, successors in interest, any person acting in concert, privity, or participation with Defendants, and any subsequent purchaser of the Facility, or any part thereof, who receives actual or constructive notice of this Order whether by personal service, by public record filed in the appropriate county land record, or otherwise. Defendants and any subsequent purchaser of the Facility are ordered and enjoined to provide a copy of this Order to each contractor employed to perform work called for by the terms of this Order and to any subsequent purchaser, lessee, or transferee of the Facility or any part thereof.

IV. SATISFACTION OF LAWSUIT AND RESERVATION OF RIGHTS

4. Plaintiff alleges in its Complaint that Defendants are responsible for violations of the terms of the Permit and of the air pollution control laws and rules of the State of Ohio. Defendants deny all such allegations. Compliance with the terms of this Consent Order shall constitute full satisfaction of any civil liability of Defendants to Plaintiff as to all claims alleged by Plaintiff in the Complaint.

5. Nothing in this Consent Order, including the imposition of stipulated civil penalties, shall limit the authority of Plaintiff to:

- a. Seek relief for claims or violations not alleged in the Complaint; or
- b. Enforce this Consent Order through a contempt action or otherwise;
- c. Seek relief for claims or violations that occur after the effective date of the Consent Order;

6. This Consent Order does not waive, abridge, settle, compromise, or otherwise impact any other claims in law or equity that Plaintiff may have against Defendants, and this Consent Order does not waive, abridge, settle, compromise or otherwise impact any claims in law or equity that other entities, governmental or otherwise, may have against Defendants. This Consent Order does not waive, abridge, settle, compromise, or otherwise impact any defenses in law or equity that Defendants may have against any claim raised by Plaintiff or any other entities, governmental or otherwise.

7. Nothing in this Consent Order shall constitute or be construed as an admission of liability, satisfaction of civil liability, a covenant not to sue, and/or a release regarding the claims alleged in the Complaint, against any person, firm, trust, joint venture, partnership, corporation, association, or other entity not a signatory to this Consent Order. Plaintiff also specifically reserves its right to file suit against any entity that is not a signatory to this Consent Order.

8. Nothing herein shall restrict the right of the Defendants to raise any administrative, legal, or equitable claim or defense with respect to such further actions.

9. Nothing in this Consent Order shall relieve Defendants of their obligations to comply with applicable federal, state, or local statutes, regulations, rules, or ordinances.

10. Defendants 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 Plaintiff in any subsequent judicial or administrative proceeding could or should have been brought in the instant case.

11. All activities undertaken by Defendants pursuant to this Order shall be undertaken in accordance with the requirements of all applicable federal, State, and local laws, rules, regulations, and permits or other orders. Where such laws appear to conflict with any

requirement of this Order, Defendants are ordered and enjoined to notify Ohio EPA immediately of the potential conflict. This Order is not a permit issued pursuant to any federal, State, or local law or rule.

V. PERMANENT INJUNCTION

General Injunctive Relief

12. Defendants are ordered and permanently enjoined to comply fully with the terms of the Permit, R.C. Chapter 3704, and the rules promulgated thereunder.

13. Defendants are ordered and permanently enjoined to comply fully with R.C. Chapter 3767.

14. The Court's Orders of August 6, 2010, August 20, 2010, October 18, 2011, and November 16, 2011 continue in effect and are incorporated by reference herein.

Specific Injunctive Relief

15. Defendants shall, as expeditiously as possible, take action to implement each of the recommendations of the Study, which is incorporated herein.

16. By May 1, 2012, Defendants shall route all air contaminant emissions from cleaning operations, including, but not limited to, closed-loop chemical cleaning, high-pressure chemical lancing, and steam cleaning in a closed loop system to the Thermal Oxidizer or the Heatec Heater, or in the case of maintenance or malfunction to the enclosed flare.

17. Defendants shall maintain at the Facility all records, documents, communications, and reports utilized or developed to implement the requirements of this Order. These items or exact duplicates of these items shall be available to Ohio EPA upon verbal or written request. In addition, Ohio EPA shall be permitted to inspect these items during normal working hours.

Defendants shall provide to the public non-trade secret and non-confidential documents and other information about Facility improvements and progress in fulfilling the requirements of this Order. These documents and other information shall be maintained on the Heartland Website and shall be updated at least every 3 months for the duration of the Consent Order. Ohio EPA (Division of Air Pollution Control, Central District Office), Columbus Division of Fire, Defense Supply Center Columbus, ODJFS, NCO, DSW, the Whitehall Fire Department and Schottenstein Property Group (The Columbus International Aircenter) shall be notified either through carbon copy or direct correspondence, as soon as practicable, when Defendants send any e-mail or correspondence to Ohio EPA relating to any incident or maintenance that is likely to cause, is likely causing, or is likely to have caused odors affecting Defendants' neighbors.

VI. CIVIL PENALTY

18. Pursuant to and in accordance with R.C. 3704.06, Defendants are enjoined and ordered to pay a total civil penalty of \$280,000 to the State of Ohio. Such penalty shall be paid as follows:

- a. Defendants shall, within 30 days of receipt of entry of this Consent Order, fund a supplemental environmental project ("SEP") by making a contribution in the amount of 20 percent—\$56,000—of the total civil penalty to Ohio EPA's Clean Diesel School Bus Program Fund (Fund 5CD0). Defendants shall tender a certified check payable to the order of "Treasurer, State of Ohio" for \$56,000. The certified check shall specify that such monies be deposited in Fund 5CD0 established by Ohio EPA for the Clean Diesel School Bus Program. The certified check, together with a letter identifying Defendants, shall be delivered to Martha Sexton or her successor, Paralegal, Office of the Attorney General of Ohio, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus,

Ohio 43215-3400. The memorandum portion of the check, or some other prominent location on the transmittal letter or documentation, shall include a reference to “A.G. EAGO No. 413457.”

- b. Defendant shall pay the remaining 80 percent—\$224,000—of the total civil penalty by cashier’s or certified check payable to the order of “Treasurer, State of Ohio” and delivered within 30 days of entry of this Consent Order to Martha Sexton or her successor, Paralegal, Office of the Attorney General of Ohio, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215-3400. The memorandum portion of the check, or some other prominent location on the transmittal letter or documentation, shall include a reference to “A.G. EAGO No. 413457.”

VII. ENFORCEMENT COSTS

19. Defendants shall pay the enforcement costs of the Ohio Attorney General in the amount of \$10,000 within 30 days of entry of this Consent Order. This payment shall be made by delivering to Martha Sexton or her successor, Paralegal, Office of the Attorney General of Ohio, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215-3400, a cashier’s or certified check for the appropriate amount, payable to the order of “Treasurer, State of Ohio.” The memorandum portion of the check, or some other prominent location on the transmittal letter or documentation, shall include a reference to “A.G. EAGO No. 413457.” Any check submitted in compliance with this paragraph shall be in addition to and separate from any check submitted pursuant to any other requirement of this Consent Order.

VIII. STIPULATED PENALTIES

20. In the event that Defendants fail to comply with any requirement or deadline contained in the Specific Injunctive Relief, paragraphs 15 through 16 of this Order, or any requirement or deadline contained in the Study, Defendants are liable for and shall pay stipulated penalties in accordance with the following schedule for each failure to comply:

- a. For each day of each failure to comply, up to and including 30 days—\$500.00 per day for each condition not met;
- b. For each day of each failure to comply, from 31 to 60 days—\$750.00 per day for each condition not met; and
- c. For each day of each failure to comply, over 60 days—\$1,000.00 per day for each condition not met.

21. Defendants shall immediately be liable for payment of stipulated penalties imposed by paragraph 20 of this Consent Order without prior demand by the State of Ohio.

22. The previous paragraphs 20 and 21 of this Consent Order notwithstanding, in the event that Defendants cause an odor event that unreasonably affects the ability of the surrounding properties to use them for their intended purpose that is reported to Ohio EPA by more than ten individuals residing within five miles from Heartland, and confirmed by Ohio EPA, or one neighboring business, agency, and/or entity, Defendants shall be liable for and shall pay stipulated penalties within thirty (30) days of receiving written demand by the State in the amounts set forth below:

- a. For each odor event that is the result of a malfunction that could have been prevented by proper operation or proper maintenance, Defendants are liable for

and shall pay stipulated penalties in the amount of \$2,500 per day per odor event, for the duration of the odor event.

- b. For all other odor events meeting the requirements in paragraph 22, Defendants are liable for and shall pay stipulated penalties in the amount of \$1,000 per day per odor event, for the duration of the odor event.

23. By no later than thirty (30) days after receiving a demand for stipulated penalties under paragraph 22, Defendants may dispute liability in accordance with paragraph 23 of this Consent Order for any or all stipulated penalties demanded by Plaintiff under paragraph 22 of this Consent Order by invoking the dispute resolution procedures as set forth below:

- a. The dispute shall be considered to have arisen on the date when Defendants send Ohio EPA a written Notice of Dispute. Such Notice of Dispute shall state clearly the matter in dispute and include a Statement of Position which shall include, but need not be limited to, any factual data, analysis, or opinion supporting Defendants' position and any supporting documentation relied upon by Defendants. The period of negotiations shall not exceed thirty (30) days from the date the dispute arises, unless that period is modified by written agreement. If the Parties cannot resolve a dispute by informal negotiations, then the position advanced by the State shall be considered binding unless, within ten (10) days after the conclusion of the informal negotiation period, Defendants file a motion for judicial review of the dispute with the Court.
- b. The invocation of dispute resolution procedures shall not, by itself, extend, postpone, or affect in anyway any obligation of Defendants under this Consent Order, unless and until the final resolution of the dispute so provides. Stipulated

penalties with respect to the disputed matter shall continue to accrue from the first day of noncompliance, but payment shall be stayed pending resolution of the dispute. If Defendants do not prevail on the disputed issue, stipulated penalties shall be assessed as provided in paragraph 22.

24. Plaintiff may exercise its discretion to reduce or waive stipulated penalties otherwise due it under paragraphs 20 and 22 of this Consent Order.

25. Stipulated penalties referenced in paragraphs 22 and 23 shall be paid in accordance with the following schedule:

- i. If the dispute is resolved by agreement or by a decision of the State that is not appealed to the Court, Defendants shall pay accrued penalties determined to be owing, together with interest calculated under R.C. 5703.47, to the State within thirty (30) days of the effective date of the agreement or the receipt of EPA's or the State's decision or order.
- ii. If the dispute is appealed to the Court and the State prevails in whole or in part, Defendants shall pay all accrued penalties determined by the Court to be owing, together with interest calculated under R.C. 5703.47, within sixty (60) days of receiving the Court's decision or order, except as provided in subparagraph (iii) below. Any decision issued by the Court shall be considered a final appealable decision under Ohio Civ.R. 54(B).
- iii. If any Defendant appeals the Court's decision and the State prevails in whole or in part, Defendants shall pay all accrued penalties determined to be due and owing, together with interest calculated under R.C. 5703.47,

within thirty (30) days of receiving a final decision from the Court of Appeals.

26. Payment of all stipulated penalties shall be paid by Defendants by delivery to Plaintiff, c/o Martha Sexton, or her successor, at the Office of the Attorney General of Ohio, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215-3400, a certified check in that amount, payable to the order of "Treasurer, State of Ohio," immediately upon the occurrence of the violation giving rise to the penalty. The memorandum portion of the check, or some other prominent location on the transmittal letter or documentation, shall include a reference to "A.G. EAGO No. 413457."

27. The payment of stipulated penalties by Defendants and the acceptance of such stipulated penalties by Plaintiff pursuant to this Section shall not be construed to limit Plaintiff's authority without exception to seek additional relief pursuant to R.C. Chapter 3704, including civil penalties under R.C. 3704.06, or R.C. Chapter 3767 to otherwise seek judicial enforcement of this Order for the same violation for which a stipulated penalty was paid or for other violations.

IX. DOCUMENT SUBMITTAL

28. All documents required to be submitted to the Central Office of Ohio EPA pursuant to this Consent Order shall be submitted to the following addresses, or to such addresses as Ohio EPA may hereafter designate in writing:

Ohio Environmental Protection Agency
Division of Air Pollution Control
Attn: Tom Kalman
Acting Assistant Chief, SIP Development & Enforcement
Lazarus Government Center, Suite 700
50 West Town Street
Columbus, Ohio 43215

Ohio Environmental Protection Agency
Division of Air Pollution Control, Central District Office
Attn: Adam Ward
Air Unit Manager, DAPC
P.O. Box 1049
50 West Town Street
Columbus, Ohio 43215

29. All documents required to be submitted to ODJFS pursuant to this Consent Order shall be submitted to the following address and/or e-mail (email being sufficient for all purposes under this Order), or to such address and/or e-mail as ODJFS may hereafter designate in writing:

Ohio Department of Job and Family Services
Attn: Carla Hall
Safety/Health Coordinator
30 East Broad Street, 30th Floor
Columbus, Ohio 43215
Carla.Hall@jfs.ohio.gov

30. All documents required to be submitted to NCO pursuant to this Consent Order shall be submitted to the following address and/or e-mail (email being sufficient for all purposes under this Order), or to such address and/or e-mail as NCO may hereafter designate in writing:

NCO Financial Systems Inc.
Attn: Terry Moyer
Assistant Manager Logistics
4000 East Fifth Avenue
Columbus, Ohio 43219
Terry.Moyer@ncogroup.com

X. RETENTION OF JURISDICTION

31. This Court shall retain jurisdiction of this action for the purpose of enforcing this Consent Order.

XI. TERMINATION

32. The provisions of this Consent Order may be terminated upon a demonstration that Defendants: (1) have completed the requirements outlined in Paragraphs 14 and 15 of this Consent Order; (2) have paid all penalties required by this Consent Order; and (3) have achieved and maintained substantial compliance for a period of one year with the terms of its Permit, R.C. Chapter 3704, and the rules promulgated thereunder, and R.C. Chapter 3767.

33. Termination of this Consent Order shall only be by order of the Court upon application of any party.

XI. COSTS

34. Defendants shall pay the court costs of this action.

XII. RELEASE OF INDIVIDUAL DEFENDANTS

35. Upon payment of the civil penalties and enforcement costs required under Paragraphs 18 and 19, Defendant William C. Snedegar and Defendant Kenneth E. Gornall are hereby fully released from the terms of this Consent Order related to future compliance and stipulated penalties provided that neither Defendant is involved in the management of Defendant Heartland Refinery Group.

XIII. ENTRY OF CONSENT ORDER AND JUDGMENT BY CLERK

36. Upon the signing of this Consent Order by the Court, the clerk is directed to enter it upon the journal. Within 3 days of entering the judgment upon the journal, the clerk is directed to 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 note the service in the appearance docket.

XIV. AUTHORITY TO ENTER INTO THE CONSENT ORDER

37. Each signatory for a company represents and warrants that he/she has been duly authorized to sign this document and so bind the company to all terms and conditions thereof.

IT IS SO ORDERED.

3/6/12
DATE

Harland H. Hale
JUDGE HARLAND H. HALE
FRANKLIN COUNTY MUNICIPAL
COURT, ENVIRONMENTAL DIVISION

APPROVED:

HEARTLAND REFINERY GROUP, LLC
KENNETH E. GORNALL
WILLIAM C. SNEDEGAR

MICHAEL DEWINE
OHIO ATTORNEY GENERAL

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