

WHEREAS, the Plaintiff and Defendant General Environmental Management, Inc. (“GEM”) agreed to the entry of an order titled Agreed Interim Order, which was entered by the court on March 7, 2006;

WHEREAS, in the Agreed Interim Order Defendant GEM agreed and was ordered to implement additional measures to address potential nuisance odor conditions and these measures were to be implemented in accordance with the schedule contained in the Agreed Interim Order;

WHEREAS, among other measures, the Agreed Interim Order required the submission of a report identifying all potential nuisance odor sources and including recommendations to reduce, minimize, or otherwise control potential nuisance odors;

WHEREAS, the Agreed Interim Order required the submission of the report within approximately 90 days after the entry of the Agreed Interim Order;

WHEREAS, on April 20, 2006, Defendant GEM’s Facility had a fire that caused the shutdown of some of its operations;

WHEREAS, the shutdown of certain operations has prevented the complete evaluation of the affected sources;

WHEREAS, on June 20, 2006, Defendant GEM submitted a document entitled “Odor Abatement Project Current Status Report”;

WHEREAS, on July 20, 2006, Defendant GEM submitted a document entitled “Odor Abatement Project Current Status Report Updated July 19, 2006”(“July 19 Update”);

WHEREAS, the Plaintiff and Defendant GEM agreed to the entry of an order titled Second Agreed Interim Order, which was entered by the court on November 30, 2006;

THEREFORE, without trial or admission of any issue of law or of fact, and upon the consent of the parties hereto, this Court hereby enters this Consent Order and Final Judgment Entry:

I. DEFINITIONS

1. As used in this Order, the following terms are defined as follows:
 - i. “Facility” means Defendant’s facility located at 2727 and 2655 Transport Road, Cleveland, Ohio 44115 (Ohio EPA Facility ID No. 1318005977).
 - ii. “Ohio EPA” means the Ohio Environmental Protection Agency.
 - iii. “Day” shall mean a calendar day, including Saturdays, Sundays or holidays. When computing any period of time under this Order, when the last day of the period falls on a Saturday, Sunday or a Holiday, the period shall run until 5:00 PM of the next day that is not a Saturday, Sunday or holiday.
 - iv. “Defendant” means General Environmental Management, LLC.
 - v. “Defendants” means all defendants named in the complaint.
 - vi. “Cleveland Division of Air Quality” or “CDAQ” is the delegated agent of the Ohio Environmental Protection Agency within Cuyahoga County.
 - vii. “Source” means “air contaminant source” as defined in R.C. 3704.01 and “source” as defined in Ohio Adm.Code 3745-15-01, and also includes any other point of origin of potential nuisance odors emanating from the Facility.
 - viii. “Submitted” when used in reference to a requirement that Defendant make a submission to government office(s) means actually received by the government office(s) identified in the requirement.

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. This Court has jurisdiction over the parties. Venue is proper in this Court.

III. PERSONS BOUND AND NOTICE PROVISIONS

3. The provisions of this Consent Order shall apply to and be binding upon Plaintiff and Defendant, and upon Defendant's agents, officers, employees, contractors, assigns, successors-in-interest, any person acting in active concert or participation with them, and any subsequent purchaser of the Facility or any part thereof who receives actual notice of this Consent Order whether by personal service, recording this Consent Order in the appropriate county land record, or otherwise. Defendants shall provide a copy of this Consent Order to each and every contractor employed to perform any of the work called for by the terms of this Consent Order and to each and every person who purchases, leases, or to whom is transferred the Facility or any part thereof by or from Defendants or any other person listed within this paragraph.

4. This Consent Order shall be binding as an equitable servitude upon the Facility.

5. At least sixty (60) days prior to the sale, conveyance or transfer of the Facility or any part thereof, Defendant shall provide written notification to the City of Cleveland, Department of Public Health, Division of Air Quality, and the Ohio Attorney General's Office, Environmental Enforcement Section of their intent to sell, convey or transfer the Facility or any part thereof. The notification shall identify the purchaser or transferee and shall state that the proposed terms of the sale, conveyance or transfer include the requirement that such purchaser or transferee comply with all of the terms and conditions in this Consent Order.

6. Defendant, any other person bound by this consent order and any subsequent transferee or purchaser of the Subject Property or any part thereof shall include terms in any conveyance, transfer, or sale agreement that require subsequent purchasers and transferees of Subject Property to comply with this Consent Order and abide and be bound by all terms and conditions outlined in this Consent Order to the same extent as Defendant.

7. The sale or transfer of the Facility or any part thereof does not relieve Defendant of its obligations of this Consent Order unless this Consent Order is first modified by agreement of the parties in writing and filed with this Court, or upon further order of this Court.

IV. SATISFACTION OF LAWSUIT AND RESERVATION OF RIGHTS

8. Counts One through Five of Plaintiff's complaint are dismissed without prejudice.

9. Compliance with the terms of this Consent Order shall constitute full satisfaction of any civil liability of Defendant to the Plaintiff for the claims alleged in Counts Six and Seven of the Plaintiff's Complaint.

10. This Consent Order shall not be construed to limit the authority of the Plaintiff to seek relief for violations other than those alleged in the Complaint and resolved by this Consent Order, nor shall this Consent Order bar the State from bringing any action against the Defendants for any violations that occur after the entry of this Order. Nothing in this Consent Order shall be construed to relieve Defendants of their obligations to comply with applicable federal, state or local statutes, regulations, or ordinances.

V. INJUNCTIVE RELIEF

11. Defendant shall fully implement the Potential Nuisance Odor Abatement Plan ("PNOAP") submitted by Defendant to CDAQ on or about April 15, 2005, and any subsequent amendments, updates, modifications, revisions or other changes thereto. Defendant shall implement the Odor Complaint Response Plan contained in the PNOAP upon receiving an odor complaint and then report in writing the results of any odor complaint investigations to CDAQ within seven days of the odor complaint being reported to Defendant.

12. Defendant shall update the PNOAP, and submit that update to Ohio EPA and CDAQ, within 14 days of Defendant identifying any additional measures that will aid in the abatement or

minimization of potential nuisance odors at the Facility. No element or portion of the PNOAP may be removed or modified except with written permission of Ohio EPA and CDAQ or by order of this Court. The Court may order the removal or modification of an element or portion of the plan if Defendant demonstrates by a preponderance of the evidence that the proposed alteration of the plan will not adversely affect Defendant's efforts to abate or minimize potential nuisance odors emanating from the Facility.

13. Defendant shall continue to implement the Community Outreach and Response Plan ("COR Plan") as part of its revised PNOAP. Defendant shall immediately implement any amendments to the COR Plan upon submission to Ohio EPA and CDAQ. The COR Plan shall at a minimum:

(a) Identify businesses, institutions, and residential neighborhoods that may be affected by odors emanating from the Facility, including but not limited to businesses, institutions, and residential neighborhoods located within a 3/4 mile radius of the Facility.

(b) Provide for communication to the businesses, institutions, and neighborhood organizations identified above advising them how to notify representatives at the Facility, by telephone or other immediate means, of odor complaints.

(c) Establish a public hotline that will allow the public to contact the facility during all hours of operation to register odor complaints.

(d) Establish a procedure requiring Defendant after receiving any odor complaints to promptly contact CDAQ via CDAQ's complaint hotline or another substitute method approved in writing by CDAQ.

(e) Require Defendant to implement the Odor Complaint Response Plan contained in the PNOAP upon receiving an odor complaint.

14. Paragraphs 4 and 5 of the Second Interim Order are incorporated into this order by

reference.

15. Defendant shall notify Ohio EPA and CDAQ in writing within five days of the return to operation, to any extent, of emissions unit P011 (Upper DAF System) or the start-up or resumption of operation, to any extent, of any other source, including De Minimis sources (as defined in OAC Rule 3745-15-05) and exempt sources (as defined in OAC Rule 3745-31-03). Within 30 days of the start-up or return to operation, to any extent, of emissions unit P011, or any other source, including De Minimis sources and exempt sources, Defendant shall submit a report that evaluates the emissions unit as a potential nuisance odor source, including as a source of fugitive emissions that may cause nuisance odors, and that makes recommendations to reduce, minimize, or otherwise control any identified potential nuisance odors from the operation of the emissions unit. Within 30 days of submission of this report, Defendant shall submit a revised PNOAP to Ohio EPA and CDAQ. The revised PNOAP shall incorporate all recommendations contained in the report to reduce, minimize, or otherwise control any identified potential nuisance odors from the above emissions units.

16. Whenever a source identified in the July 19 Update or in any subsequent update has any increase in emissions or operation that has the potential to increase or cause nuisance odor emissions from that source (“significant increase”), Defendant shall notify Ohio EPA and CDAQ of the source and the nature of the increase in writing within five days of the increase. Within 30 days of any such significant increase in emissions or operations, Defendant shall submit a report that re-evaluates the source as a potential nuisance odor source, including as a source of fugitive emissions that may cause nuisance odors, and that makes recommendations to reduce, minimize, or otherwise control any identified potential nuisance odors from the operation of the emissions unit. Within 30 days of submission of this report, Defendant shall submit a revised PNOAP to Ohio EPA and CDAQ. The revised PNOAP shall incorporate all recommendations contained in the report to reduce, minimize,

or otherwise control any identified potential nuisance odors from the above emissions units.

VI. FACILITY ACCESS

17. Plaintiffs and their representatives and contractors shall have access at reasonable times to the Facility, and shall have access to any other property controlled by or available to Defendant to which access is necessary to effectuate the actions required by this Order. The access allowed by this paragraph shall be for the purposes of conducting activities related to this Order including but not limited to:

- (a) Monitoring the work or any other activities taking place at the Facility;
- (b) Verifying any data or information submitted to Plaintiff;
- (c) Conducting investigations at or near the Facility;
- (d) Obtaining samples;
- (e) Assessing the need for, planning, or implementing additional odor abatement measures at the Facility;
- (f) Inspecting and copying records, operating logs, contracts or other documents maintained or generated by Defendants or their agents, as a result of the implementation of this Order and applicable law; or
- (g) Assessing Defendant's compliance with this Order.

18. Nothing in this Order shall be construed to limit the statutory authority of the Director or his authorized representatives to enter at reasonable times upon any private or public property, real or personal, to inspect or investigate, obtain samples and examine or copy any records to determine compliance with R.C. Chapter 3704.

VII. SUBMITTAL OF DOCUMENTS

19. All documents required to be submitted to Ohio EPA and the designated local air pollution control agency pursuant to this Order shall be submitted to the following addresses, or to

such addresses as Ohio EPA or CDAQ may hereafter designate in writing:

Ohio Environmental Protection Agency
Division of Air Pollution Control
Attn: John Paulian or his successor
Environmental Supervisor
Compliance Monitoring Unit, DAPC/CO
Lazarus Government Center
122 South Front Street
Columbus, Ohio 43215
Fax: (614) 644-3681

Cleveland Division of Air Quality
Attn: George Baker or his successor
Chief of Enforcement
1925 St. Clair Avenue
Cleveland, Ohio 44114-2080
Fax: (216) 420-8047

VIII. STIPULATED PENALTIES

20. In the event that Defendant fails to comply with any requirement or deadline contained or incorporated in paragraphs 11 through 16 of this Order or any requirement or deadline contained in any document approved in accordance with this Order, Defendant is 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 with a requirement or deadline of this Order, up to and including thirty (30) days — One Hundred Dollars (\$100.00) per day for each requirement or deadline not met.
- b. For each day of each failure to comply with a requirement or deadline of this Order, from thirty-one (31) to sixty (60) days — Two Hundred Dollars (\$200.00) per day for each requirement or deadline not met.
- c. For each day of each failure to comply with a requirement or deadline of this Order, over sixty (60) days — Three Hundred Dollars (\$300.00) per day for each requirement or deadline not met.

21. Any payment required to be made under the provisions of this Section of the Order shall be made by delivering to Plaintiff, c/o Mark Lemon or his successor at the 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 or checks made payable to the order of "Treasurer, State of Ohio," for the appropriate amount within thirty (30) days from the date of the failure to meet the requirement or deadline of this Order. The payment of the stipulated penalty shall be accompanied by a letter briefly describing the type of violation, deadline or requirement not met and the date upon which the violation of this Order occurred. The memo portion of the check, or some other prominent location on the transmittal letter or documentation, shall include a reference to "A.G. EAGO No. 209386."

22. The payment of stipulated penalties by Defendant and the acceptance of such stipulated penalties by Plaintiff pursuant to this Section shall not be construed to limit Plaintiff's authority to seek additional relief pursuant to R.C. Chapter 3734, including civil penalties under R.C. 3734.13, or to otherwise seek judicial enforcement of this Order, for the same violation for which a stipulated penalty was paid or for other violations.

IX. COMPLIANCE WITH APPLICABLE LAWS, PERMITS AND APPROVALS

23. All activities undertaken by Defendant 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. Defendant shall submit timely applications and requests for any such permits and approvals as may be required by law. Where such laws appear to conflict with the other requirements of this Order, Defendant is ordered and enjoined to immediately notify Ohio EPA and CDAQ of the potential conflict. This Order is not a permit issued pursuant to any federal, state or local law or rule.

X. RETENTION OF JURISDICTION

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

XI. ENTRY OF CONSENT ORDER AND FINAL JUDGMENT BY CLERK

25. Upon signing of this Order by the Court, the clerk is directed to enter it upon the journal. Within three (3) days of entering this Order 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 Rule 5(B) of the Ohio Rules of Civil Procedure and note the service in the appearance docket.

XII. COSTS

26. Defendant shall pay the court costs of this action.

XIII. AUTHORITY TO ENTER INTO THE ORDER

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

IT IS SO ORDERED:



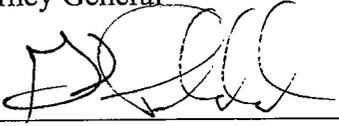
CUYAHOGA COUNTY
COURT OF COMMON PLEAS

JUDGE

Respectfully submitted,

Marc Dann
Attorney General

By:

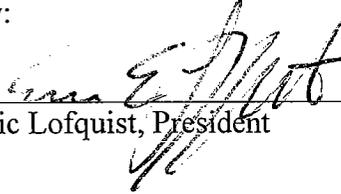


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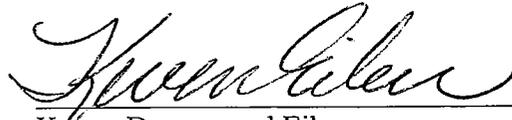
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