

IN THE COURT OF COMMON PLEAS  
SUMMIT COUNTY, OHIO

STATE OF OHIO, *ex rel.*  
MICHAEL DEWINE  
OHIO ATTORNEY GENERAL

Plaintiff,

v.

DAVID KLEIN  
d.b.a. BELLE-AIRE CLEANERS

Defendant.

CASE NO.: CV 2011 07 3867

JUDGE CALLAHAN

SUMMIT COUNTY  
CLERK OF COURTS

2011 SEP 19 PM 12:45

DANIEL M. HERRIGAN

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CONSENT ORDER AND FINAL JUDGMENT ENTRY

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WHEREAS, Plaintiff, the State of Ohio, on relation of its Attorney General Michael DeWine, at the written request of the Director of Environmental Protection, filed a Complaint seeking injunctive relief and civil penalties from David Klein d.b.a. Belle-Aire Cleaners for violations of Revised Code Chapter 3704 and the rules promulgated thereunder;

WHEREAS, Plaintiff and Defendant David Klein have consented to the entry of this Consent Order;

Therefore, without the trial, admission, or determination of any issue of fact or law, and upon the consent of the parties hereto, it is hereby ORDERED, ADJUDGED, and DECREED as follows:

**I. DEFINITIONS**

1. "Complaint" refers to the State of Ohio's Complaint filed against David Klein d.b.a. Belle-Aire Cleaners in the Summit County Court of Common Pleas on July 15, 2011.
2. "Court" refers to the Summit County Court of Common Pleas.

3. "Defendant" means David Klein d.b.a. Belle-Aire Cleaners.
4. "Director" means the Director of the Ohio Environmental Protection Agency.
5. "Effective date" means the date the Court enters this fully executed Consent Order.
6. "Facility" is defined in Ohio Adm.Code 3745-15-01(Q) and is used herein to refer the location where the alleged violations of Ohio's air pollution laws occurred at 649 Storer Avenue, Akron, Summit County, Ohio.
7. "Ohio EPA" means the Ohio Environmental Protection Agency.
8. "Order" refers to this Consent Order.
9. "Plaintiff" means the State of Ohio.
10. All other terms not specifically defined herein, are defined, to the extent applicable, in accordance with the definitions provided in R.C. 3704 and Ohio Adm.Code Chapter 3745-15.

## **II. JURISDICTION AND VENUE**

11. The Court has jurisdiction over the parties and the subject matter of this case. The Complaint states a claim for which relief can be granted under R.C. Chapter 3704. Venue is proper in this Court for the purposes and duration of this Order. Defendant shall not challenge the Court's jurisdiction to enter and enforce this Order.

## **III. PERSONS BOUND**

12. The provisions of this Order shall apply to and be binding upon Plaintiff and Defendant, and Defendant's agents, officers, employees, assigns, successors-in-interest, heirs, and any other person who would be bound pursuant to Rule 65(D) of the Ohio Rules of Civil Procedure, including any person acting in concert, privity or participation with Defendant who receives actual notice of this Order whether by personal service or otherwise.

#### IV. SATISFACTION OF LAWSUIT AND RESERVATION OF RIGHTS

13. Plaintiff alleges in its Complaint that Defendant operated a perchloroethylene dry cleaning machine without obtaining a permit to install-and-operate or a permit to operate, in violation of Ohio Adm.Code 3745-31-02(A)(1) and the superseded provision of former Ohio Adm.Code 3745-35-02, respectively. Completion of the terms of this Consent Order shall constitute full satisfaction of any civil and administrative liability of Defendant to Plaintiff for the claims alleged in Plaintiff's Complaint up to the effective date of this Order.
14. This Order shall not be construed to limit the authority of Plaintiff to seek relief for violations not alleged in the Complaint, nor shall this Order bar the State of Ohio from bringing any action against Defendant or against any other person for any violation(s) that occur after the entry of this Order.
15. This Order shall not be construed to limit the authority of Plaintiff to take any action authorized by law against any person, including Defendant, to eliminate or mitigate conditions at the Facility that may present an imminent threat to the public health or safety, or to the environment.
16. This Order shall not be construed as 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.
17. Nothing in this Order shall be construed to relieve Defendant of its obligation to comply with applicable federal, state or local statutes, regulations, or ordinances.

## V. INJUNCTIVE RELIEF

18. From the effective date of this Consent Order, Defendant agrees and is hereby enjoined and ordered to comply with R.C. Chapter 3704 and rules adopted thereunder; specifically, obtaining proper permits prior to installation and operation of dry cleaning equipment utilizing perchloroethylene, pursuant to Ohio Adm.Code Chapter 3745-31-02(A)(1).
19. Defendant agrees and is hereby ordered and enjoined to comply with Ohio Adm.Code 3745-31-02(A)(1) and R.C. 3704.05 to submit a complete and approvable application for a permit to install-and-operate prior to any future installation or operation of dry cleaning equipment utilizing perchloroethylene.

## VI. CIVIL PENALTY

20. Pursuant to and in accordance with R.C. 3704.06, Defendant is enjoined and ordered to pay a total civil penalty of ten thousand dollars (\$10,000.00) to the State of Ohio. Such penalty shall be paid as follows:
- a. Defendant shall, within thirty (30) days of receipt of entry of this Consent Order, fund a supplemental environmental project ("SEP") by making a contribution in the amount of twenty (20) percent – two thousand dollars (\$2,000.00)– of the total civil penalty to Ohio EPA's Clean Diesel School Bus Program Fund (Fund 5CD0). Defendant shall tender a certified check payable to the order of "Treasurer, State of Ohio" for two thousand dollars (\$2,000.00). 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 Defendant, shall be delivered to Karen Pierson 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. 423625."

- b. Defendant shall pay the remaining eighty (80) percent – eight thousand dollars (\$8,000.00) – of the total civil penalty by certified check payable to the order of "Treasurer, State of Ohio" and delivered within thirty (30) days of entry of this Consent Order to Karen Pierson 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. 423625."

#### **VII. STIPULATED PENALTIES**

21. In the event that Defendant fails to comply with any requirement or deadline contained in this Order or any requirement or deadline contained in any document approved in accordance with this Order, Defendant is liable for and shall on his own accord pay stipulated penalties without demand or notice by the State of Ohio in accordance with the following schedule for each failure to comply:

- a. For each day of each failure to comply with any requirement or deadline of this Order up to and including the first thirty (30) days of each failure, 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 for days thirty-one (31) to sixty (60) days of each failure, two hundred fifty dollars (\$250.00) 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 for each day over sixty (60) days of each

failure, five hundred dollars (\$500.00) per day for each requirement or deadline not met.

22. Any payment required to be made under the provisions of Section VII of this Order shall be made by delivering to Plaintiff, c/o 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 43215-3400, a 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 "Klein, A.G. EAGO No. 423625."
23. The imposition, 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 remedies, civil, criminal or administrative, for violations of applicable laws, or to otherwise seek judicial enforcement of this Order for the same violation for which a stipulated penalty was paid or for other violations.

#### **VIII. RETENTION OF JURISDICTION**

24. The Court will retain jurisdiction of this action for purposes of enforcing this Consent Order.

#### **IX. COURT COSTS**

25. Defendant is hereby ordered to pay all court costs of this action.

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**X. ENTRY OF CONSENT ORDER AND JUDGMENT BY CLERK**

26. Pursuant to Rule 58 of the Ohio Rules of Civil Procedure, upon signing of this Consent Order by the Court, the clerk is directed to enter it upon the journal. Within three (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 Rule 5(B) of the Ohio Rules of Civil Procedure and note the service in the appearance docket.

**XI. AUTHORITY TO ENTER INTO THE CONSENT ORDER**

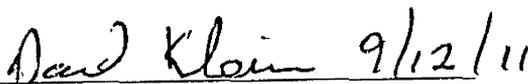
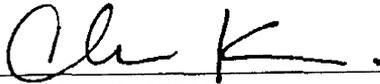
27. The undersigned represents and warrants that he understands the terms and conditions of this Order and certifies that he is fully authorized to enter into the terms and conditions of this Order and to execute and legally bind Defendant to this document.

**IT IS SO ORDERED:**

  
JUDGE CALLAHAN

\_\_\_\_\_  
Date

**APPROVED:**

<p> 9/12/11 David Klein d.b.a. Belle-Aire Cleaners 649 Storer Avenue Akron, Ohio 44320  <i>Pro se Defendant</i></p>	<p><b>MICHAEL DEWINE</b> <b>OHIO ATTORNEY GENERAL</b></p> <p> Chris Kim (0087030) Christina E. Grasseschi (0082417) Assistant Attorneys General Environmental Enforcement Section 30 East Broad Street, 25<sup>th</sup> Floor Columbus, Ohio 43215-3400</p>
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ATTORNEY GENERAL OFFICE  
ENVIRONMENTAL ENFORCEMENT

	Telephone: (614) 644-2766 Facsimile: (614) 644-1926
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*Counsel for Plaintiff State of Ohio*

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