

3. At all times relevant hereto, Plaintiff Tanya Higgins has resided at 497 East 127th Street, in the City of Cleveland, County of Cuyahoga, State of Ohio.

4. At all times relevant hereto, Plaintiff Christina Jones has resided at 826 East 147th Street, in the City of Cleveland, County of Cuyahoga, State of Ohio.

5. Defendant, Collinwood Bio Energy LLC is a Ohio Limited Liability Company and subsidiary of Quasar Energy Group with its principal place of business located at 8600 East Pleasant Valley Road, in the City of Independence, County of Cuyahoga, State of Ohio.

6. Defendant, its agents, and its predecessors constructed, operate and maintain the Bio Energy facility located at 13550 Aspinwall Ave, in the City of Cleveland, County of Cuyahoga, State of Ohio (hereinafter “Defendant’s facility” or “facility”).

VENUE

7. Venue in the Cuyahoga County Court of Common Pleas is proper because Defendant conducts the activity in Lake County giving rise to the claims for relief.

GENERAL ALLEGATIONS

8. Defendant operates an anaerobic digestion bio-energy facility where it produces renewable energy through digesting organic matter and producing biogas which is then converted into electricity.

9. Plaintiffs’ property has been, and continues to be, physically invaded by noxious odors.

10. The noxious odors which entered Plaintiffs’ property originated from Defendant’s facility located at 13550 Aspinwall Ave, in the City of Cleveland, County of Cuyahoga, State of Ohio.

11. Defendant’s facility, and specifically its emissions, has been the subject of frequent complaints from residents in the adjacent residential area. As a result, more than 150

households have contacted Plaintiffs' counsel documenting the odors they attribute to the Defendant's facility.

12. **Defendant's History of Failing to Control its Emissions:** Defendant has a well documented history of failing to control its emissions, including, but not limited to the following:

- a. A July 5, 2012 Notice of Violation from the Ohio Environmental Protection Agency ("OEPA") for the release of odors constituting an Air Pollution Nuisance;
- b. A July 27, 2016 Notice of Violation from the Cleveland Division of Air Quality for the release of odor emissions into the atmosphere;
- c. A February 24, 2016 Notice of Violation from the Cleveland Division of Air Quality for the release of odor emissions into the atmosphere;
- d. A March 16, 2016 Notice of Violation from the Cleveland Division of Air Quality for the release of odor emissions into the atmosphere;
- e. Several complaints made to the OEPA from area residents confirming the presence of odors attributed to Defendant's facility;
- f. In 2016, the Cleveland Division of Air Quality received approximately 29 complaints made to the from area residents confirming the presence of odors attributed to Defendant's facility; and
- g. A state action filed by the Ohio Attorney General against Defendant's facility for its emissions of off-site odors.

13. Defendant, its predecessors and agents, either constructed or directed the construction of the facility and exercised control and ownership over the facility.

14. The invasion of Plaintiffs' property by noxious odors has interfered with Plaintiffs' use and enjoyment of their property, resulting in damages in excess of \$25,000.00.

15. Defendant intentionally, recklessly, willfully, wantonly, maliciously, grossly and negligently failed to properly construct, maintain and operate its facility, and caused the invasion of Plaintiffs' property by noxious odors on intermittent and reoccurring dates.

16. Defendant failed to install, maintain, and operate adequate technology, to properly

control emissions of noxious odors onto Plaintiffs' property. Such failures include, but are not limited to, inadequate control of the emissions arising from Defendant's internal bio-gas dome.

CLASS ALLEGATIONS

A. Definition of the Class

17. Plaintiffs bring this action individually and on behalf of all persons as the Court may determine to be appropriate for class certification, pursuant to Ohio Rule of Civil Procedure

23. Plaintiffs seek to represent a Class of persons preliminarily defined as:

All owner/occupants and renters of residential property residing within one (1.0) mile of the facility's property boundary.

The definitional boundary is subject to modification as discovery will disclose the location of all class members. Plaintiffs reserve the right to propose one or more sub-classes if discovery reveals that such subclasses are appropriate.

B. Numerosity

18. The Class is so numerous that joinder is impracticable as there are over 3,500 households within the Class area.

C. Commonality

19. Numerous common questions of law and fact predominate over any individual questions affecting Class members, including, but not limited to the following:

- a. whether and how Defendant intentionally, recklessly, willfully, wantonly, maliciously, grossly and negligently failed to construct, maintain and operate the facility;
- b. whether Defendant owed any duties to Plaintiffs;
- c. which duties Defendant owed to Plaintiffs;

- d. which steps Defendant has and has not taken in order to control the release of noxious odors through the construction, maintenance and operation of its facility;
- e. whether and to what extent the facility's noxious odors were dispersed over the class area;
- f. whether it was reasonably foreseeable that Defendant's failure to properly construct, maintain and operate the facility would result in an invasion of Plaintiffs' property interests;
- g. whether the degree of harm suffered by Plaintiffs and the class constitutes a substantial annoyance or interference; and
- h. the proper measure of damages incurred by Plaintiffs and the Class.

D. Typicality

20. Plaintiffs have the same interests in this matter as all the other members of the Class and their claims are typical of all members of the Class. If brought and prosecuted individually, the claims of each Class member would require proof of many of the same material and substantive facts, utilize the same complex evidence including expert testimony, rely upon the same legal theories and seek the same type of relief.

21. The claims of Plaintiffs and the other Class members have a common cause and their damages are of the same type. The claims originate from the same failure of the Defendant to properly construct, maintain and operate the facility.

22. All Class members have suffered injury in fact as a result of the invasion of their property by Defendant's release of noxious odors, causing damage to Plaintiffs' property.

E. Adequacy of Representation

23. Plaintiffs' claims are sufficiently aligned with the interests of the absent Class

members to ensure that the Class claims will be prosecuted with diligence and care by Plaintiffs as representatives of the Class. Plaintiffs will fairly and adequately represent the interests of the Class and do not have interests adverse to the Class.

24. Plaintiffs have retained the services of counsel who are experienced in complex class action litigation and in particular class actions stemming from invasions of industrial emissions. Plaintiffs' counsel will vigorously prosecute this action and will otherwise protect and fairly and adequately represent Plaintiffs and all absent Class members.

F. Class Treatment Is the Superior Method of Adjudication

25. A class action is superior to other methods for the fair and efficient adjudication of the controversies raised in this Complaint because:

- a. Individual claims by the Class members would be impracticable as the costs of pursuit would far exceed what any one Class member has at stake;
- b. Little or no individual litigation has been commenced over the controversies alleged in this Complaint and individual Class members are unlikely to have an interest in separately prosecuting and controlling individual actions;
- c. The concentration of litigation of these claims in one forum will achieve efficiency and promote judicial economy; and
- d. The proposed class action is manageable.

26. The prosecution of separate actions by or against individual members of the Class would create the risk of (i) inconsistent or varying adjudications with respect to individual members of the Class, which could establish incompatible standards of conduct for the party opposing the Class; and (ii) adjudications with respect to individual members of the Class which would as a practical matter be dispositive of the interests of the other members not

parties to the adjudications or substantially impair or impede their ability to protect their interests.

27. Notice can be provided to members of the Class by regular U.S. Mail.

I. CAUSE OF ACTION ONE

NUISANCE

28. Plaintiffs restate the allegations set forth in all previous paragraphs of this Complaint as if fully rewritten herein.

29. The noxious odors, which entered Plaintiffs' property originated from the anaerobic digestion bio-energy facility constructed, maintained and operated by Defendant.

30. By failing to reasonably repair and maintain its facility, Defendant has negligently created an unreasonable risk of harm by causing the invasion of Plaintiffs' property by noxious odors. Such failures include, but are not limited to, inadequate control of the emissions arising from Defendant's internal bio-gas dome.

31. As a direct and proximate result of the foregoing conduct of Defendant, Plaintiffs suffered damages to their property as alleged herein.

32. Plaintiffs did not consent to noxious odors to enter upon their property.

33. By causing noxious odors by Defendant to physically invade Plaintiffs' property, Defendant maliciously, recklessly, willfully, wantonly, grossly and with a conscious disregard for the rights and safety of Plaintiffs created a nuisance which substantially and unreasonably interfered with Plaintiffs' use and enjoyment of their property. Such substantial and unreasonable interference includes, but is not limited to:

- a. loss of use and ability to enjoy the outside areas of Plaintiffs' property due to the presence of noxious odors;
- b. diminution in the value of Plaintiffs' property; and

c. annoyance, and inconvenience, including but not limited to, being woken up in the middle of the night by noxious odors, the discomfort of enduring noxious odors, and the inability to invite guests to Plaintiffs' residences due to the embarrassment and annoyance of the noxious odors invade Plaintiffs' property.

34. Defendant's substantial and unreasonable interference with Plaintiffs' use and enjoyment of their property constitutes a nuisance for which Defendant is liable to Plaintiffs for all damages arising from such nuisance, including compensatory relief.

II. CAUSE OF ACTION TWO

NEGLIGENCE AND GROSS NEGLIGENCE

35. Plaintiffs restate the allegations set forth in all previous paragraphs of this Complaint as if fully rewritten herein.

36. On occasions too numerous to mention, Defendant negligently and improperly constructed, maintained and/or operated its facility in that the facility caused noxious odors to enter Plaintiffs' property.

37. As a direct and proximate result of Defendant's negligence and gross negligence in constructing, maintaining and/or operating the facility, Plaintiffs' property, on occasions too numerous to mention, were physically by noxious odors.

38. As a further direct and proximate result of the foregoing conduct of Defendant, Plaintiffs suffered physical damages to their property as alleged herein. Such physical damage includes, but is not limited to diminution in the value of Plaintiffs' property.

39. By failing to properly construct, maintain and/or operate its facility, Defendant failed to exercise its duty of ordinary care and diligence so that noxious odors would not invade Plaintiffs' property.

40. By failing to construct, maintain and/or operate its facility, Defendant has caused

the invasion of Plaintiffs' property by noxious odors.

41. Defendant knowingly breached its duty to exercise ordinary care and diligence when it improperly constructed, maintained and/or operated its facility and knew, or should have known upon reasonable inspection that such actions would cause Plaintiffs' property to be invaded by noxious odors. As a direct and proximate result of the failure of Defendant to exercise ordinary care, Plaintiffs' residences were physically invaded by noxious odors.

42. Defendant's conduct in knowingly allowing conditions to exist, which caused noxious odors to physically invade Plaintiffs' property, constitutes gross negligence as it demonstrates a substantial lack of concern for whether an injury resulted to Plaintiffs.

43. Defendant's gross negligence was malicious and made with a conscious disregard for the rights and safety of Plaintiffs, which entitles Plaintiffs to an award of compensatory relief.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, individually and on behalf of the proposed Class, pray for judgment as follows:

- A. Certification of the proposed Class pursuant to Ohio Rule of Civil Procedure 23;
- B. Designation of Plaintiffs as representatives of the proposed Class and designation of their counsel as Class Counsel;
- C. Judgment in favor of Plaintiffs and the Class members and against Defendant;
- D. Award Plaintiffs and the Class members compensatory damages, including pre-judgment and post-judgment interest thereupon;
- E. An Order holding that entrance of the aforementioned noxious odors upon Plaintiffs' property constituted a nuisance;
- F. Award attorney fees and costs; and

G. Such further relief as the Court deems just and proper.

JURY DEMAND

Plaintiffs hereby demand a trial by jury.

Dated: May 10, 2017

Respectfully submitted,

s/ Daniel P. Petrov

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