

OHIO E.P.A.

BEFORE THE JUN 10 1999

OHIO ENVIRONMENTAL PROTECTION AGENCY

ENTERED DIRECTOR'S JOURNAL

In The Matter of:

Custom Cartons, Inc.  
717 O'Neill Drive  
Hebron, OH 43025

and

Don and Betty Gastineau  
134 Carmarthen Way  
Granville, OH 43023

Regarding the approximately 6.075 acre  
property known as  
CUSTOM CARTONS, INC.,  
Licking County, OH

I certify this to be a true and accurate copy of the  
official document as filed in the records of the Ohio  
Environmental Protection Agency.  
By: *M. J. Dauter* Date: 10-7-1999

Amendment to  
Covenant Not to Sue

Director's Final Findings  
and Orders

Pursuant to Ohio Revised Code ("ORC") Chapter 3746 and Ohio Administrative Code ("OAC") Chapter 3745-300, the Director of the Ohio Environmental Protection Agency ("Director") hereby makes the following Findings and issues the following Orders.

Findings

1. An original No Further Action Letter ("NFA Letter No. 98NFA042") was submitted to the Ohio EPA Division of Emergency and Remedial Response on December 9, 1998, by Dennis A. Smalley, a Certified Professional (Certified Professional No. CP197) as defined in ORC Section 3746.01(E) and OAC Rule 3745-300-01(A)(8) (the "Certified Professional").
2. NFA Letter No. 98NFA042 describes investigation and/or remedial activities undertaken at the property located at 717 O'Neill Drive, Hebron, Licking County, Ohio (the "Property"). An exact legal description of the Property is contained in the warranty deed recorded at Licking County Official Record Volume 648, Page 26.
3. Amendments to NFA Letter No. 98NFA042, dated December 24, 1998 and January 4, 1999, were submitted by the Certified Professional to Ohio EPA. NFA Letter No.

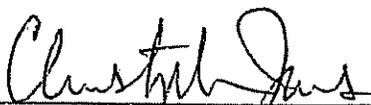
98NFA042, Ohio EPA's comments, and Amendments to NFA Letter No. 98NFA042 are collectively referred to hereafter in these Findings and Orders as the "NFA."

4. Based on the information contained in the NFA, the Director determined that the issuance of a Covenant Not to Sue for the Property is protective of human health, safety and the environment.
5. On February 8, 1999, a Covenant Not to Sue was issued for the Property in the name of Custom Cartons, Inc., a corporation which was owned by Don and Betty Gastineau during a portion of the time that the voluntary action was conducted, and which contributed to the voluntary action activities conducted at the Property
6. Following the issuance of the Covenant Not to Sue, Ohio EPA was informed that, in addition to Custom Cartons, Inc., Don and Betty Gastineau were persons who conducted the voluntary action, on whose behalf the No Further Action Letter for the Property was issued, and therefore in whose names the Covenant Not to Sue should also be issued.
7. The purpose of this amendment is to identify Don and Betty Gastineau as persons who conducted the voluntary action at the Property and therefore subject to the Covenant Not to Sue issued for the Property on February 8, 1999.

#### Orders

1. Upon the effective date of these Orders, the Covenant Not to Sue issued to Custom Cartons, Inc., on February 8, 1999 is hereby amended to include, and shall be applicable to, Don and Betty Gastineau.
2. This amendment shall be filed in the Licking County Recorder's Office, in the same manner as a deed to the Property, within thirty (30) days of the date of this Amendment.

**IT IS SO ORDERED:**

  
\_\_\_\_\_  
Christopher Jones, Director  
Ohio Environmental Protection Agency

6/10/99  
Date

FEB 8 1999

BEFORE THE

OHIO ENVIRONMENTAL PROTECTION AGENCY

In The Matter of: :  
: :  
Custom Cartons, Inc. : Covenant Not to Sue  
717 O'Neill Drive : :  
Hebron, Ohio 43055 : Director's Final Findings  
: and Orders  
:

Regarding the approx. 6.075 acre property known as :  
CUSTOM CARTONS, INC., :  
Licking County, Ohio :

Pursuant to Ohio Revised Code (ORC) Chapter 3746 and Ohio Administrative Code (OAC) Chapter 3745-300, the Director of the Ohio Environmental Protection Agency (Director) hereby makes the following Findings and issues the following Orders (Findings and Orders or Covenant).

Findings

1. An original No Further Action Letter (NFA Letter No. 98NFA042) was submitted to the Ohio EPA Division of Emergency and Remedial Response on behalf of Custom Cartons, Inc. on December 9, 1998, by Dennis A. Smalley, a Certified Professional (Certified Professional No. CP197) as defined in ORC Section 3746.01(E) and OAC Rule 3745-300-01(A)(8) (the Certified Professional).
2. NFA Letter No. 98NFA042 describes investigation and/or remedial activities undertaken at the property located at 717 O'Neill Drive, Hebron, Licking County, Ohio (the Property). An exact legal description of the Property is contained in the warranty deed recorded at Licking County Official Record Volume 648, Page 26 and is attached hereto as Attachment 1.
3. Amendments to NFA Letter No. 98NFA042, dated December 24, 1998 and January 4, 1999, were submitted by the Certified Professional to Ohio EPA. NFA Letter No. 98NFA042, Ohio EPA's comments, and Amendments to NFA Letter No. 98NFA042 are collectively referred to hereafter in these Findings and Orders as the "NFA."

FEB 8 1999

4. The Certified Professional has verified by affidavit that the investigation and/or remedial activities undertaken at the Property comply with the standards established in ORC Chapter 3746 and OAC Chapter 3745-300, that the Property is eligible to receive a Covenant Not to Sue under the Voluntary Action Program, and that the voluntary action was conducted in compliance with all applicable federal, state and local laws.
5. DLZ Laboratories, Inc. (Certified Laboratory No. CL 00014) and Aqua Tech Environmental Labs, Inc. (Certified Laboratory No. CL0009) are certified laboratories as defined in ORC Section 3746.01(D) and OAC Rule 3745-300-01(A)(7), whose services were used in support of the NFA for the Property.
6. According to information provided in the NFA, DLZ Laboratories, Inc., and Aqua Tech Environmental Labs, Inc. performed analyses for which they were certified and qualified, pursuant to ORC Chapter 3746 and OAC Chapter 3745-300, that formed the basis for the issuance of the NFA as determined by the Certified Professional.
7. No land use restriction has been placed on the Property described in the NFA and, based on the information contained in the NFA, the Property meets the applicable standards contained in ORC Chapter 3746 and OAC Chapter 3745-300 for residential land use.
8. Based upon the information contained in the NFA, the following investigation and/or remedial activities were undertaken at the Property:
  - a) Completion of a Phase I Property Assessment, in accordance with OAC Rule 3745-300-06;
  - b) Completion of a Phase II Property Assessment, in accordance with OAC Rule 3745-300-07, including but not limited to investigations of soil and ground water to assess environmental conditions related to releases of hazardous substances and petroleum.
9. Based on the information contained in the NFA, the Director has determined that the issuance of a Covenant Not to Sue for the Property is protective of human health, safety and the environment.

#### Orders

1. Upon the effective date of these Orders, and subject to the conditions outlined below, Ohio EPA hereby releases and covenants not to sue Custom Cartons, Inc., or its agents,

employees, shareholders, officers, directors, successors or assigns, from all civil liability to the State to perform additional investigation and/or remedial activities to address the releases of hazardous substances or petroleum identified in the Phase I and Phase II Property Assessments completed in accordance with ORC Chapter 3746 and OAC Chapter 3745-300.

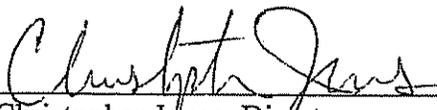
2. The NFA and the Covenant provided in these Findings and Orders may be transferred to any person by assignment or in conjunction with the acquisition of title to the Property.
3. A summary of the NFA, and a copy of these Findings and Orders, including Attachment 1 hereto, shall be filed in the Licking County Recorder's Office, in the same manner as a deed to the Property.

**Conditions of and Limitations on the Covenant**

1. This Covenant shall only apply to the approximately 6.075 acre Property described in the NFA, upon which the investigation and/or remedial activities specified in the NFA were conducted.
2. Pursuant to ORC Section 3746.12(B), this Covenant shall remain in effect for as long as the Property to which this Covenant pertains continues to comply with the applicable standards upon which this Covenant is based, as outlined in Finding Nos. 1 through 9 above.
3. This Covenant shall not apply to releases of hazardous substances or petroleum:
  - (a) that occur after the submittal of the NFA to Ohio EPA, or
  - (b) on or emanating from the Property, which are not described in the NFA, or
  - (c) for which investigation and/or remedial activities were conducted that were not in compliance with ORC Chapter 3746 or OAC Chapter 3745-300.
4. This Covenant shall not apply to:
  - (a) claims for natural resource damages the State may have pursuant to Sections 107 or 113 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), 42 U.S.C. Sections 9607 and 9613, as amended; or

- (b) claims the State may have pursuant to Section 107 of CERCLA, 42 U.S.C. Section 9607, as amended, for costs other than those for damages to natural resources, provided that the State incurs those other costs as a result of an action by the United States Environmental Protection Agency; or
  - (c) as otherwise specifically provided in ORC Chapter 3746.
5. Nothing in ORC Chapter 3746 limits the authority of the Director to act under ORC Sections 3734.13 and 3734.20 to 3734.23, or to request that a civil action be brought pursuant to the ORC or common law of the State to recover the costs incurred by Ohio EPA for investigating or remediating a release or threatened release of hazardous substances or petroleum at or from a property where a voluntary action is being or has been conducted under ORC Chapter 3746 and OAC Chapter 3745-300, when the Director determines that the release or threatened release poses an imminent and substantial threat to public health or safety or the environment.
6. Nothing in this Covenant shall be construed to limit and/or waive the Director's authority to revoke this Covenant pursuant to any of the circumstances for revocation of a Covenant, as provided in ORC Chapter 3746 and OAC Chapter 3745-300.

**IT IS SO ORDERED:**

  
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Christopher Jones, Director  
Ohio Environmental Protection Agency

2/5/99  
Date

OHIO EPA  
ENTERED  
DIRECTOR'S JOURNAL

FEB 8 1999

