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OHIO EPA

Issuance Date: DEC - 6 1996

Effective Date: DEC - 6 1996

I certify this to be a true and accurate copy of the original document as filed in the records of the Ohio Environmental Protection Agency.

By: [Signature] Date 12-6-96

BEFORE THE

OHIO ENVIRONMENTAL PROTECTION AGENCY

In The Matter of: :

Ward Engineering, Inc. :
 (A.K.A. Goldberg East Property) : Covenant Not to Sue
 Viola and Swan Streets :
 Grandview Heights, Ohio : Director's Final Findings
 43212 : and Orders
 :

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

FINDINGS

1. A complete original No Further Action Letter (NFA Letter No. CN00005) was submitted to the Ohio EPA Division of Emergency and Remedial Response on behalf of Mr. Thomas Ward and Ward Engineering, Inc., on September 3, 1996, by Mr. Thomas J. Mignery, of Burgess & Niple, Limited, a certified professional (Certified Professional No. CP 125) as defined in ORC Section 3746.01(E) (the Certified Professional).
2. NFA Letter No. CN00005 describes investigation and risk assessment activities undertaken for the 3.556 acre tract of land known as the "Goldberg East" property, located at Viola and Swan Streets, Grandview Heights, Franklin County, Ohio (the Property). An exact legal description of the Property is contained in the warranty deed recorded in the Franklin County Recorder's Office in Volume 3914, B-03; Volume No.

321 D-10; Plat Book 13, page 22; and Plat Book 5, page 322; and is attached hereto as Exhibit "A".

3. Supplemental information dated November 25, 1996, regarding the investigation and risk assessment activities on the Property was submitted to the Ohio EPA Division of Emergency and Remedial Response. (Supplemental Information to NFA Letter No. CN00005.)

4. The investigation and risk assessment activities undertaken by Ward Engineering, Inc., at the Property include:

(a) A land use restriction on the Property which will be recorded in the Office of the County Recorder of Franklin County, Ohio, as described herein; and

(b) an assessment of risk to employees who work on and children who visit the Property based on concentrations of lead in soil upon the following exposure assumptions for children:

(i) Exposure Frequency: 6 years;

(ii) Exposure Duration: 100 days per year[-1] = 1.92 days per week[-1] (twice weekly for 50 of 52 weeks per year); and

(iii) Use of Columbus municipal water for human consumption and human contact purposes at the Property.

5. Based upon the information contained in NFA Letter No. CN00005, the Certified Professional has concluded that the Property meets the requirements contained in ORC Section 3746.04(B)(7)(a)-(e), and Ohio Administrative Code (OAC) rule 3745-300-13, as listed below:

(a) ORC Section 3746.04(B)(7)(a): NFA Letter No. CN00005 contains a summary of information required to be submitted by the person undertaking the voluntary action to the Certified Professional;

(b) ORC Section 3746.04(B)(7)(b): NFA Letter No. CN00005 includes a notification that a risk assessment was performed in lieu of using numerical clean-up standards. NFA Letter No. CN00005 also states that the

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risk assessment was performed in accordance with the document entitled Risk Assessment Guidance for Superfund, Volume I, Human Health Evaluation Manual (Part A), United States Environmental Protection Agency, December, 1989;

(c) ORC Section 3746.04(B)(7)(c): NFA Letter No. CN00005 identifies the contaminants addressed at the Property, the suspected source(s) and levels of contamination prior to remediation;

(d) ORC Section 3746.04(B)(7)(d): NFA Letter No. CN00005 identifies other persons who performed work to support the request for NFA Letter No. CN00005 and the nature and scope of work which they performed;

(e) ORC Section 3746.04(B)(7)(e): NFA Letter No. CN00005 includes a list of data, information, records, and documents relied upon by the Certified Professional in preparing NFA Letter No. CN00005.

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6. The Certified Professional has verified that the investigation and risk assessment activities undertaken for the Property comply with the standards established in ORC Section 3746.07 and OAC Chapter 3745-300 and determined that the Property complies with all applicable standards established in ORC Section 3746.07.
7. ATEL Laboratories (Certified Laboratory No. CL 00010) and DLZ Laboratories (Certified Laboratory No. CL 00018) are certified laboratories as defined in ORC Section 3746.01(D).
8. According to information provided in NFA Letter No. CN00005, ATEL Laboratories and DLZ Laboratories performed analyses for which they are qualified, that formed the basis for NFA Letter No. CN00005 issued by the Certified Professional, Thomas Mignery.
9. A land use restriction will be recorded in the Office of the County Recorder of Franklin County, Ohio, in accordance with ORC Sections 3746.07(F) and 3746.04(B)(7)(a). According to the use restriction to be contained in the deed, the Property will be restricted to non-child targeted retail, commercial, light industrial, industrial and heavy industrial uses, as described below.

10. Based on the information contained in NFA Letter No. CN00005, and the Supplemental Information to NFA Letter No. CN 00005, the Director has determined that the issuance of a Covenant Not to Sue (the "Covenant") for the Property is protective of public health, safety and the environment.

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ORDERS

Covenant Not to Sue

Upon the transfer of fee simple of the Property to Ward Engineering, Inc. and the filing of the deed restriction, as set forth in Condition of and Limitation on the Covenant No. 2, and subject to the conditions outlined below, the Ohio EPA hereby releases and covenants not to sue Ward Engineering, Inc., or its agents, employees, shareholders, officers, directors, successors or assigns, for any and all civil liability to the State to perform additional investigative and/or remedial activities to address the releases of hazardous substances or petroleum identified through the Phase I and Phase II property assessments completed in accordance with ORC Chapter 3746.

2. NFA Letter No. CN00005, as supplemented, and the Covenant provided in these Orders may be transferred to any person by assignment or in conjunction with the acquisition of title to the Property.
3. NFA Letter No. CN00005, as supplemented, the Covenant provided in these Orders, and the deed restriction on the future use of the Property as specified in Finding No. (4)(a), Finding No. 9, and Condition of and Limitations on the Covenant No.2, shall be filed in the Office of the County Recorder of Franklin County, Ohio, 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 Property as described herein, upon which the investigation and risk assessment activities specified in NFA Letter No. CN00005, as supplemented, were conducted.

2.
Not later than seven (7) days from the date fee simple is transferred to Ward Engineering, Inc., a deed restriction on the use of the Property, along with a legal description of the Property, as set forth in Exhibit "A" hereto, shall be filed in the Office of the County Recorder for Franklin County, Ohio. The deed restriction shall read as follows:

"Ward Engineering Inc., represents and declares that it is the owner in fee simple of real estate described on an attachment hereto, marked "Exhibit A," and incorporated by reference herein, and further declares, pursuant to Chapter 3746. of the Revised Code, that the following protective covenants and restrictions ("Use Restrictions") hereinafter set forth are to run with the land and shall be binding upon all parties and all persons hereafter acquiring any ownership interest in or to the Property, or any part thereof, or having or claiming under or having any title derived immediately or remotely from or through such persons, their heirs, executors, administrators, successors or assigns, to-wit:

Restrictive Covenant

The Property may be used only for non-child targeted retail, commercial, light industrial, industrial and heavy industrial uses. This restrictive covenant is declared in furtherance of Section 3746.10(C) of the Ohio Revised Code.

For violation or breach of the foregoing Use Restriction, Ward Engineering Inc. and all persons hereafter, acquiring any ownership interest in or to the Property, or any part thereof, as well as the Ohio Environmental Protection Agency, shall have the right to proceed at law or in equity to compel compliance with the terms hereof or to obtain injunctive relief in order to prevent violation or breach of the foregoing Use Restriction. Failure to timely enforce the covenant and Use Restriction by any party shall not bar subsequent enforcement by such party and shall in no manner be deemed a waiver.

If the Property is used in any manner inconsistent with the Use Restriction herein, any Covenant Not to Sue which may be issued regarding the Property by the Ohio

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Environmental Protection Agency will be void on and after the commencement of any nonconforming use.

This instrument is to be recorded in the Office of the Franklin County Recorder, pursuant to Sections 3746.10(C) and 317.08(A) of the Ohio Revised Code, and shall be deemed incorporated by reference in any further deed of conveyance of or to the Property, or any part thereof."

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If the deed restriction and the legal description of the Property are not recorded in the Office of the County Recorder for Franklin County, Ohio, in accordance with this Order, the Covenant shall be void.

3. The person subject to this Covenant shall provide annually, an affidavit to the Director which states, to the best of his knowledge, information and belief, that the risk assessment assumptions contained in Finding No. (4) (b) above have been maintained, and the basis for this statement.
4. 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 No's. 1 through 10 above.
5. This Covenant shall not apply to releases of hazardous substances or petroleum:
 - (a) which occur after the submittal of NFA Letter No. CN00005, as supplemented, to Ohio EPA, or
 - (b) on or emanating from the Property which are not described in NFA Letter No. CN00005, as supplemented, or
 - (c) for which investigative and/or remedial activities were conducted which were not in compliance with ORC Chapter 3746.
6. 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.A. 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

as otherwise specifically provided in ORC Chapter 3746.

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 the rules adopted thereunder, when the Director determines that the release or threatened release poses an imminent and substantial threat to public health or safety or the environment.

8. 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 terms or conditions for revocation of a Covenant, as provided in ORC Chapter 3746 and rules adopted thereunder.

IT IS SO ORDERED:


Donald R. Schregardus, Director
Ohio Environmental Protection Agency

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Date

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OHIO EPA

2740 East Main Street
Bexley, Ohio 43209-2577
(614) 235-8677
Telefax 235-4559

August 29, 1996

3.556 Acres

Situated in the State of Ohio, County of Franklin, City of Grandview Heights and being a part of Lots 11 and 12 Northwest Boulevard Plat No. 6, as numbered and delineated upon the recorded plat thereof, of record in Plat Book 13, Page 22, Recorder's Office, Franklin County, Ohio and being a part of Lots 1, 9, 10 and 11 and all of Lots 2, 3, 4, 5, 6, 7 and 8 of Block 3 Clayton's Subdivision as numbered and delineated upon the recorded plat thereof, of record in Plat Book 5, Page 322, said Recorder's Office and being a part of Viola Avenue (50 feet wide-vacated by City of Grandview Heights Ordinance 10-53) and being all of parcels 2, 3 and 4 and part of parcels 1, 5 and 6 conveyed to Elizabeth W. Goldberg and Robert F. Goldberg, Trustees under agreement dated August 20, 1973 and Ruby Goldberg in Official Records Volume 321 D-10, said Recorder's Office, and a part of Parcel Two conveyed to Elizabeth W. Goldberg and Robert F. Goldberg, Trustees under agreement dated August 20, 1973 and Ruby Goldberg in Official Records Volume 3914 B-03, said Recorder's Office, and being more particularly described as follows:

Commencing at a set iron pipe at the northeast corner of the Hausman Steel Corporation 1.331 Acre tract (O.R.V. 1178 F-18, said Recorder's Office), being also the intersection of the southerly line of Goodale Boulevard with the westerly line of Edgeworth Street (50 feet wide-established by City of Grandview Heights Ordinance 14-40);

Thence, along the easterly line of said 1.331 Acre tract (westerly line of said Edgeworth Street), South 03 degrees 18 minutes 51 seconds West, 300.00 feet to a found iron pipe (passing a found iron pipe at the southeast corner of said 1.331 Acre tract at 250.00 feet) at the northwest corner of said Parcel Two (O.R.V. 3914 B-03) and the southwest corner of Swan Street (50 feet wide-established by City of Grandview Heights Ordinance 14-40);

Thence, along the northerly line of said Parcel Two (southerly line of said Swan Street), South 86 degrees 41 minutes 09 seconds East, 25.00 feet to a set iron pipe and the TRUE POINT OF BEGINNING OF THIS DESCRIPTION;

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3.556 Acres

Thence, along the northerly line of said Parcel Two, across said Parcel 1 and along the northerly line of said Parcel 2 (O.R.V. 321 D-10) and across said vacated Viola Avenue (along the southerly line of said Swan Street), South 86 degrees 41 minutes 09 seconds East, 466.52 feet to a set iron pipe in the easterly line of said Viola Avenue and westerly line of said Lot 1;

Thence, along the easterly line of Viola Avenue (westerly line of said Lot 1), South 03 degrees 18 minutes 51 seconds West, 0.60 feet to a set iron pipe at the northwest corner of said Parcel 3;

Thence, along the northerly line of said Parcel 3 (across said Lot 1), North 82 degrees 38 minutes 37 seconds East, 36.00 feet to a set iron pipe in the westerly line of Extrados Street (30 feet wide) and at the easterly most corner of said Lot 1, northerly most corner of said Lot 2 and northerly most corner of said Parcel 4;

Thence, along the westerly line of Extrados Street, the northeasterly line of said Parcel 4 (Lots 2, 3, 4, 5, 6 and 7) and the northeasterly line of Parcel 5 (Lot 8 and part of Lot 9), and along the arc of a curve to the left having a radius of 1,336.00 feet, a sub-delta of 09 degrees 26 minutes 07 seconds, a tangent 110.25 feet, a chord bearing and distance of South 39 degrees 56 minutes 19 seconds East, 219.76 feet to a set iron pipe at the northerly most corner of the State of Ohio 0.15 Acre tract of record in Deed Book 3290, Page 21;

Thence, across said Parcel 5 and crossing said Lots 9, 10 and 11 and along the westerly line of said 0.15 Acre tract, South 22 degrees 45 minutes 47 seconds West, 173.45 feet to a set iron pipe at the southeast corner of said Lot 11 (southwest corner of said 0.15 Acre tract) and in the northerly line of an alley (15 feet wide);

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Thence, along the southerly line of said Parcel 5 (southerly line of Lots 11, 10, 9 and 8) and the northerly line of said Alley, North 79 degrees 13 minutes 20 seconds West, 129.30 feet to a set iron pipe at the intersection of said alley line with the easterly line of said Viola Avenue and a corner of said Lot 8;

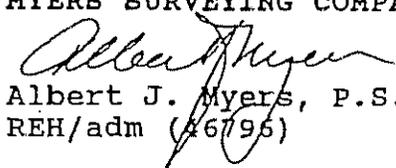
Thence, along the west line of said Parcel 5 (west line of said Lot 8) and the easterly line of said Viola Avenue, North 03 degrees 18 minutes 51 seconds East, 27.25 feet to a set iron pipe;

Thence, across said Viola Avenue and along the southerly line of said Parcels 2 and 1, the southerly line of said Parcel Two (O.R.V. 3914 B-03), being also the southerly line of said Lots 12 and 11 and the northerly line of said alley, North 79 degrees 13 minutes 20 seconds West, 470.51 feet to a set iron pipe;

Thence, across said Parcel Two (O.R.V. 3914 B-03) and along a line parallel with and 25.0 feet easterly of, as measured at right angles to, the east line of the 1.77 Acre tract of record in Deed Book 3719, Page 734, said Recorder's Office, North 03 degrees 18 minutes 51 seconds East, 212.38 feet to the place of beginning, CONTAINING 3.556 ACRES, subject to all legal highways, easements, restrictions, leases and agreements of record and of records in the respective utility offices.

The above description was prepared from a survey performed in January 1984 and July and August 1996 by the undersigned. Basis of bearings is the west line of Edgeworth Street assumed South 03 degrees 18 minutes 51 seconds West. Set iron pipes are 30" x 1" O.D. with an orange plastic plus inscribed "P.S. #6579".

MYERS SURVEYING COMPANY, INC.


Albert J. Myers, P.S. #6579
REH/adm (16796)

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