



**Environmental
Protection Agency**

John R. Kasich, Governor
Mary Taylor, Lt. Governor
Scott J. Nally, Director

MAY 16 2011

CERTIFIED MAIL #

Mr. William Miller, President
Superior Fibers, LLC
499 North Broad Street
Bremen, OH 43107

Re: Superior Fibers, Inc., [03NFA161]
Revocation of Covenant Not to Sue
Pursuant to Ohio Revised Code §3746.12(B)(4)

Property Location: 499 North Broad Street
Bremen, Fairfield County, OH

Dear Mr. Miller:

On March 22, 2005, Ohio EPA issued a Covenant Not to Sue to Superior Fibers, Inc. The Covenant was issued for the 32.076 acre property located at 499 North Broad Street, Bremen, Fairfield County, Ohio (Property). Pursuant to the conditions and limitations identified in the Covenant as well as Ohio Revised Code (ORC) §3746.12(B)(1), the Covenant shall remain in effect as long as the Property continues to comply with the applicable standards upon which the Covenant was based and Superior Fibers implements the 2005 Operation and Maintenance Plan (2005 O&M Plan) in accordance with the terms of the Operation and Maintenance Agreement (2005 O&M Agreement).

The February 2006 ground water sampling event indicated that chemicals of concern (COCs) were detected in nine of the 16 wells that comprised the early warning well network. Confirmatory sampling conducted on March 16, 2006 verified the existence of COCs in five of the early warning wells, and that the ground water contaminant plume has migrated down-gradient and beyond the Property's boundary. The 2005 O&M Plan provided for the implementation of a contingent ground water remediation plan in the event that COCs were reported in any of the early warning wells on the Property. However, Superior Fibers did not implement the contingent ground water remediation plan. Subsequent ground water sampling conducted off-property confirmed that the ground water contaminant plume was much larger than previously

determined and that the Property was not in compliance with VAP applicable standards for ground water at the Property boundary.

Superior Fibers retained the services of CH2M Hill in late June 2006 and proposed to use a perimeter air sparging/biosparging system to prevent continued migration of the ground water contaminant plume off-property. Superior Fibers also proposed to treat the Property's source area in both soil and ground water. On December 13, 2006, Ohio EPA provided Superior Fibers with notice of the Property's noncompliance with applicable ground water standards upon which the Covenant is based, and an opportunity to cure the noncompliance in accordance with ORC §3746.12(B)(2) and (B)(3). On January 26, 2007, Ohio EPA and Superior Fibers entered into a compliance schedule agreement in accordance with ORC §3746.12(B)(3).

The compliance schedule agreement provided a schedule for restoring the Property to compliance with the applicable standards of the Voluntary Action Program (VAP) as set forth in ORC Chapter 3746 and Ohio Administrative Code (OAC) Chapter 3745-300. Pursuant to the compliance schedule agreement and the approved March 2008 Addendum to the 2005 O&M Plan for the Property, May 15, 2011 was the deadline for Superior Fibers to demonstrate that the Property complied with VAP applicable standards for ground water at the Property boundary.

However, based on the ground water monitoring results from the November 2010 and February 2011 sampling events, it was determined that the Property would not meet the VAP applicable standards for ground water at the Property boundary by May 15, 2011. This was confirmed in a meeting between agency staff and representatives from CH2M Hill, Superior Fibers, and Reichhold Chemicals, Inc. held at Ohio EPA on February 22, 2011. At that time, Superior Fibers was advised that unless it could be demonstrated that the Property meets the VAP applicable standards for ground water at the Property boundary, the Ohio EPA staff would recommend that the Director revoke the Covenant.

Pursuant to ORC §3746.12(B)(4), the Director has issued Final Findings and Orders ("Orders") revoking the Covenant Not to Sue issued on March 22, 2005 for the Property. A certified copy of the Orders is enclosed with this letter. The issuance of the Orders revoking the Covenant Not to Sue for the Property is a final action of the Director and will be public noticed in accordance with OAC 3745-47-07.

The action of the Director may be appealed to the Environmental Review Appeals Commission. The appeal must be in writing and set forth the action complained of and the grounds upon which the appeal is based. The appeal must be filed with the Commission within 30 days after notice of the action. (See ORC §3745.04.) The appeal must be accompanied by a filing fee of \$70.00, which the Commission, in its discretion, may reduce if by affidavit it is demonstrated that payment of the full amount of the fee would cause extreme hardship. Notice of the filing of the appeal

shall be filed with the Director within three days after the appeal is filed with the Commission. Ohio EPA requests that a copy of the appeal be served upon the Ohio Attorney General's Office, Environmental Enforcement Section. The appeal may be filed with the Commission at 309 South Fourth Street, Room 222, Columbus, Ohio 43215.

If you have any questions regarding the enclosed Final Findings and Orders revoking the Covenant Not to Sue, please contact Ms. Martha Cooper of Ohio EPA's Legal Office at (614) 644-3037.

Sincerely,



Tiffani Kavalec
Program Manager, ACRE, DERR CO

Enclosure

cc w/ enclosure: Rick Ricketts, Esq.
Rick Clark, Superior Fibers
Chris Schraff, Esq.
Brian Kanzler, Reichhold Chemicals, Inc.
Julie Schucker, P.G., C.P. CH2M Hill
Martha Jane Cooper, Legal
Deborah Strayton, DERR-CDO
Ray Moreno, DERR-CDO
Jason Reed, DDAGW-CDO
Eric Sainey, DERR-CO
File – CO and CDO

TO BE RECORDED IN DEED RECORDS,
PURSUANT TO ORC 317.08(A)

AFFIDAVIT

STATE OF OHIO)
)
COUNTY OF FRANKLIN) ss:

Before me, the subscriber, a Notary Public in and for the State of Ohio, personally appeared Tonya R. Lassiter, who, being duly sworn according to law, deposes and says that: (i) she is employed as a records management officer in the Legal Office of the Ohio Environmental Protection Agency ("Ohio EPA") and, as such, is authorized to sign this Affidavit on behalf of Ohio EPA, and (ii) the attached document is a true and correct copy of the Revocation of the Covenant Not to Sue / Director's Final Findings and Orders issued by the Director, and entered in the Ohio EPA Director's Journal on May 16, 2011, regarding property known as Superior Fibers, Inc. Property, located at 499 North Broad Street, Bremen, Fairfield County, Ohio.

Tonya R. Lassiter
Tonya R. Lassiter
Records Management Officer
Ohio EPA Legal Office

Sworn to and subscribed before me, a Notary Public in and for the State of Ohio, this 16th day of May, 2011.

[Signature]
Notary Public
State of Ohio

Permanent Commission
No expiration, R.C. 147.03

This instrument prepared by:

Martha J. Cooper, Attorney
Ohio EPA Legal Office
P.O. Box 1049
Columbus, Ohio 43216-1049



SUSAN C. KROEGER
Attorney at Law
Notary Public
State of Ohio
Lifetime Commission

OHIO E.P.A.

MAY 16 2011

BEFORE THE

OHIO ENVIRONMENTAL PROTECTION AGENCY

ENTERED DIRECTOR'S JOURNAL

In the matter of

Superior Fibers, Inc.
aka Superior Fibers, LLC
499 North Broad Street
Bremen, OH 43107

**Revocation of Covenant
Not to Sue**

**Director's Final Findings
and Orders**

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

Regarding property known as:

Superior Fibers Property
499 North Broad Street
Bremen, OH 43107

By David Cassel Date: 5-16-11

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

I. FINDINGS

1. A No Further Action Letter, No. 03NFA161 ("NFA Letter"), was submitted on February 19, 2003 to the Ohio EPA under the Voluntary Action Program ("VAP") on behalf of Superior Fibers, Inc. (also known as Superior Fibers, LLC) (the "Volunteer"), by Dennis A. Smalley, then a certified professional, No. CP197, as defined in ORC §3746.01(E) (effective September 28, 1994) and OAC Rule 3745-300-01(A)(8) (effective October 21, 2002).
2. On March 22, 2005, Ohio EPA issued a Covenant Not to Sue ("Covenant") to the Volunteer regarding the approximately 32.076-acre property located at 499 North Broad Street, Bremen, Fairfield County, Ohio (the "Property"). A copy of the legal description is attached as Exhibit A and incorporated herein as if fully rewritten. The Covenant was recorded on December 22, 2006 with the Fairfield County Recorder at DR Book 1452, Pages 911 to 980. The Covenant incorporated by reference an Operation and Maintenance Agreement ("O&M Agreement") and Operation and Maintenance Plan ("O&M Plan") to demonstrate continued compliance with VAP applicable standards for ground water at the Property boundary.
3. Based on the information contained in the NFA Letter and the implementation of the O&M Plan and Agreement, and all other conditions set forth in the Findings and Orders, the Director of the Ohio EPA determined that the NFA Letter demonstrated the Property met the VAP applicable standards in accordance with OAC Chapter 3745-300 (effective October 21, 2002), including but not limited to:

- a. Commercial and industrial land use category direct contact soil standards for hazardous substances, in accordance with Tables III and V of OAC 3745-300-08 for generic numerical standards.
 - b. Soil standards based on volatile emissions of volatile organic compounds ("VOCs") from soil to indoor air, derived through Property-specific risk assessment procedures in accordance with OAC 3745-300-09 for human receptor exposures not related to direct contact with soils.
 - c. Ground water standards for human exposures related to potable use of ground water on or underlying the Property. Although the ground water underlying the Property contained chemicals of concern in excess of unrestricted potable use standards, the VAP ground water applicable standards were met through the prohibition against extraction of ground water for potable purposes at or underlying the Property as described by the recorded Declaration of Use Restrictions.
 - d. Ground water standards based on volatile emissions of VOCs from ground water to indoor air, derived through property-specific risk assessment procedures in accordance with OAC Rule 3745-300-09(D) for human receptor exposures not related to potable use of ground water.
 - e. Surface water standards, determined in accordance with OAC Rule 3745-300-08(E), at the Property.
 - f. Sediment standards for human receptor exposures, determined in accordance with OAC Rule 3745-300-09(F)(2)(a), at the Property.
 - g. Sediment standards for exposures to ecological receptors, determined in accordance with OAC Rule 3745-300-09(F)(2)(b), at the Property.
4. Pursuant to the O&M Plan and Agreement, the Volunteer conducted quarterly ground water monitoring at the Property including monitoring wells situated near the Property boundary. Irregular ground water monitoring results led to Ohio EPA's participation with respect to the collection and splitting of ground water samples obtained during the February 2006 sampling event.
 5. The February 2006 quarterly ground water sampling event indicated that chemicals of concern ("COCs") were detected in nine of the 16 wells that comprised the early warning well network at the Property boundary. Confirmatory sampling conducted on March 16, 2006 verified the existence of COCs in five of the early warning wells. The sample results indicated that contaminants in ground water had migrated beyond the Property boundary, resulting in a failure of VAP applicable standards.
 6. The 2005 O&M Plan provided for the implementation of a contingent ground water remediation plan in the event that COCs were reported in any of the early warning wells on the Property. However, the Volunteer did not implement the contingent ground water remediation plan.

7. An investigation into ground water sampling data and other work previously submitted by former Certified Professional Dennis Smalley lead to a disciplinary action by Ohio EPA that included revocation of his VAP certified professional certification. The Volunteer removed Mr. Smalley from the project.
8. Many issues associated with the failure to report, properly sample and implement the 2005 O&M Plan, or timely modify the 2005 O&M Plan are the result of the improper activities of Mr. Smalley. Pursuant to ORC §3746.12(B)(1), the responsibility for demonstrating and maintaining compliance with VAP applicable standards at the Property under the Covenant remains with the Volunteer.
9. The Volunteer retained the services of CH2M Hill in June 2006 to evaluate the extent of ground water contamination and propose an alternate contingency plan for remediation of the ground water at the Property in order to demonstrate compliance with the VAP applicable standards.
10. On December 13, 2006, Ohio EPA sent the Volunteer a Notice of Failure to Comply with Applicable Standards and a proposed compliance schedule agreement that provided for an opportunity to cure in accordance with ORC §§3746.12(B)(2) and (B)(3).
11. Pursuant to ORC §3746.12(B)(3), the compliance schedule agreement was fully executed between Ohio EPA and the Volunteer on January 26, 2007. The compliance schedule agreement provided a schedule for amending the 2005 O&M Plan and restoring the Property to compliance with VAP applicable standards as set forth in OAC Chapter 3745-300.
12. Quarterly ground water monitoring reported in May, August and September 2007 included the results from several newly installed off-property wells. The ground water sample results demonstrated that the contaminated ground water plume extended well beyond the Property's boundary. Detections of COCs in ground water were reported in off-property ground water monitoring wells that were located within approximately 400 feet of the village of Bremen's municipal wellfield.
13. On August 11, 2008, the Director approved the March 2008 Addendum to the 2005 O&M Plan pursuant to the compliance schedule agreement and ORC §3746.12(B)(3). The March 2008 Addendum provided for the implementation of additional remedies at the Property to achieve compliance with VAP applicable standards for ground water at the Property boundary by May 15, 2011.
14. The November 2010 ground water sampling results indicated that at least eleven wells located along the Property boundary remained in noncompliance with the VAP applicable standards. The February 2011 preliminary ground water sampling results indicated that at least eight wells located along the Property boundary remained in noncompliance with VAP applicable standards. In addition, Ohio EPA conducted sampling of several off-property wells during the November 2010 sampling event. The results indicated no improvement in ground water quality for those off-property wells.
15. On February 22, 2011, Ohio EPA met with representatives of the Volunteer, and the prior owner of the Property, Reichhold Chemicals, Inc. ("Reichhold Chemicals") to discuss the

status of compliance with the compliance schedule agreement and various options available to the Volunteer. Ohio EPA informed the Volunteer and Reichhold Chemicals that unless compliance with the VAP applicable standards for ground water at the Property boundary was demonstrated by May 15, 2011 in accordance with the compliance schedule agreement, Ohio EPA would recommend to the Director that the Covenant be revoked in accordance with ORC §3746.12(B)(4).

16. By letter from Attorney Chris Schraff dated March 14, 2011, Ohio EPA was informed that CH2M HILL, the firm retained by the Volunteer and Reichhold Chemicals would discontinue certain activities under the March 2008 Addendum to the 2005 O&M Plan, and that Reichhold Chemicals intended to terminate the services required by a certified professional under the VAP. To date, the Volunteer has not indicated how it will proceed regarding the Property.
17. Pursuant to ORC §3746.12(B)(3), the compliance schedule agreement, and the approved 2008 Addendum to the O&M Plan, the Volunteer was required to bring the Property into compliance with VAP applicable standards for ground water at the Property boundary by May 15, 2011.
18. The Volunteer has not complied with ORC §3746.12(B)(3) and the timeline established in the approved March 2008 Addendum to the 2005 O&M Plan. Based on the ground water monitoring results as reported and confirmed in early 2006, and most recently in 2010, ground water has never been in compliance with the VAP applicable standards at the Property boundary from the time the NFA Letter was submitted in February 2003 until May 2011.

II. SUMMARY

19. Pursuant to ORC §3746.12(B)(1), the Covenant shall remain in effect for as long as the Property continues to comply with the VAP applicable standards upon which the Covenant is based, as referenced in the March 22, 2005 Findings and Orders approving the Covenant issued to the Volunteer for the Property, including but not limited to the 2005 O&M Plan and Agreement.
20. As provided in ORC Chapter 3746 and OAC Chapter 3745-300, nothing in the Covenant shall be construed to limit or waive the Director's authority to revoke the Covenant in response to any of the circumstances for revocation of the Covenant.
21. Pursuant to ORC §3746.12(B)(4), if the Director finds that a person with whom the Director has entered into a compliance schedule agreement has failed to return the Property to compliance with the VAP applicable standards within the time established in the agreement, the Director by issuance of an order as a final action under ORC Chapter 3745, shall revoke the Covenant issued for the Property.
22. The Property does not meet the VAP applicable standards as provided for in ORC Chapter 3746, OAC Chapter 3745-300 and the compliance schedule agreement. The Volunteer has failed to demonstrate compliance with VAP applicable standards for ground water at the

Property boundary, in violation of §3746.12(B)(1), the compliance schedule agreement, the March 2008 Addendum to the O&M Plan and the Conditions and Limitations of the Covenant.

23. Therefore, the Covenant issued to the Volunteer for the Property must be revoked in accordance with ORC §3746.12(B)(4).

III. ORDERS

REVOCAION

1. Pursuant to ORC §3746.12(B)(4), upon the issuance of these Findings and Orders, the Covenant Not to Sue for the Property, as described in NFA Letter No. 03NFA161 as amended, issued to Superior Fibers, Inc. (now known as Superior Fibers, LLC) on March 22, 2005, and recorded on December 22, 2006 with the Fairfield County Recorder at DR Book 1452, Pages 911 to 980; is hereby revoked.

REQUIREMENT TO RECORD FINDINGS AND ORDERS / REVOCATION OF COVENANT NOT TO SUE

2. Within 30 days after the issuance of these Findings and Orders, the Volunteer shall:
 - a. File for recording a copy of these Findings and Orders revoking the Covenant with the Fairfield County Recorder's Office in the same manner as a deed to the Property pursuant to ORC § 3746.12, §3746.14 and §317.08.
 - b. Submit to Ohio EPA a copy of these Findings and Orders that shows the filing date stamp of the Fairfield County Recorder's Office or other reliable information that verifies the recording of the Findings and Orders in accordance with this Order. The submission shall include a cover letter that identifies "*Recorded – Revocation of Covenant Not to Sue for NFA Letter No.03NFA161.*" The submission shall be delivered either (1) electronically to the DERR Records Management Officer at Ohio EPA's Central Office, at records@epa.state.oh.us or (2) by U.S. mail or by other reliable means to both Ohio EPA's Central Office, 50 West Town Street, Suite 700, P.O. Box 1049, Columbus, OH 43216-1049, Attention: DERR Records Management Officer and Ohio EPA's Central District Office, 50 W. Town Street, Suite 700, P.O. Box 1049, Columbus, OH 43216-1049, Attention: DERR Site Coordinator for Superior Fibers, LLC.

IV. PUBLIC NOTICE AND RIGHT TO APPEAL

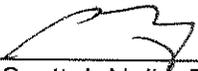
This revocation of the Covenant is a final action of the Director and will be public noticed in accordance with OAC Rule 3745-47-07. The action may be appealed to the Environmental Review Appeals Commission ("Commission"). The appeal must be in writing and set forth the action complained of and the grounds upon which the appeal is based. The appeal must be filed

with the Commission within thirty days after notice of the action. (See ORC §3745.04). The appeal must be accompanied by a filing fee of \$70.00 which the Commission, in its direction, may reduce if by affidavit it is demonstrated that payment of the full amount of the fee would cause extreme hardship. Notice of the filing of the appeal shall be filed with the Director within three days after the appeal is filed with the Commission. Ohio EPA requests a copy of the appeal be served upon the Ohio Attorney General's Office, Environmental Enforcement Section. The appeal may be filed with the Commission at 309 South Fourth Street, Room 222, Columbus, Ohio 43215.

V. RESERVATION OF RIGHTS

Nothing in these Findings and Orders shall be construed to limit the authority of the Ohio EPA to seek relief for other noncompliance with ORC Chapter 3746 or OAC Chapter 3745-300, or noncompliance with other applicable law, including ORC Chapters 3704, 3734, and 6111 or any rules adopted under those chapters.

IT IS SO ORDERED:



Scott J. Nally, Director
Ohio Environmental Protection Agency

MAY 16 2011

Date

Director's CNS Revocation Orders
Superior Fibers 03NFA161
Fairfield County, Ohio

Exhibit A
Legal Description
Superior Fibers Property
NFA Number 03NFA161

LEGAL DESCRIPTION

EXHIBIT A

I. And being a part of the Northeast Quarter of Section 16, Township 16, Range 17, beginning at a stone at the Northeast corner of Section 16; thence South 1903.45 feet to a point in State Route No. 664; thence North 89° West 526.11 feet (passing an iron pin at 30 feet) to an iron pin on the East boundary of T. & O. C. Railroad right of way; thence North 2° 44' West 1898.96 feet on East boundary of T. & O. C. Railroad right of way to an iron pin on North Section line; thence South 89° 47' East 616.68 feet on the Section line to the place of beginning containing 24.916 acres, more or less and subject to all legal road right of ways.

Grantor claims title by deed of conveyance recorded in Deed Book 327, page 411, Recorder's Office, Fairfield County, Ohio.

II. Being in the Southeast corner of Section 9, Township 16, Range 17 and bounded as follows: Bounded on the North by State Route 37, on the East by the section line which is the boundary of Sections 9 and 10 lying on the property line of State Route 664. Bounded on the South by the section line which is the boundary between Sections 9 and 16 lying on the property line formally known as County Road No. 47. Bounded on the West by the East boundary of the right of way of the New York Central Railroad. Beginning at a spike nail on the Southwest corner 'A' at the intersection of the Eastern boundary of the railroad right of way and the section line common to Sections 9 and 16. Thence with the said right of way N. 3° 51' E. (magnetic bearing, true bearing N. 2° 36' E.) for a distance of 411 feet to corner 'C', thence with the property line of State Route 37 bearing N. 81° 20' 30" E. a distance of 662 feet to corner 'D' which is the intersection of the property line of State Route 37 with that of State Route 664 the latter lying on the section line common to Sections 9 and 10. Thence S. 5° 23' 48" W. with the property line of State Route 664 and the section line common to Sections 9 and 10 a distance of 587 feet to corner 'G' the intersection of the property lines of State Route 664 and formerly known as County Road 47 being also the intersection of the section lines common to Sections 9 and 10 and common to Sections 9 and 16 respectively. Thence with the property line of formerly known as County Road 47 which is on the section line common to Sections 9 and 16 bearing N. 83° 36' 10" W. a distance of 616 feet to the beginning corner 'A', containing 7.16 acres, more or less.

Grantor claims title by deed of conveyance recorded in Deed Book 379, page 588, Recorder's Office, Fairfield County, Ohio.

DISCRETION APPROVED FOR PLANNING
 FAIRFIELD COUNTY ENGINEERING DEPT.
 BY *gk.* DATE 5/11/84



**Environmental
Protection Agency**

John R. Kasich, Governor
Mary Taylor, Lt. Governor
Scott J. Nally, Director

To: Joseph W. Testa, Tax Commissioner of Ohio

C/O: Shelley Wilson, Executive Administrator for Real Property,
Tax Equalization Division, Dept. of Taxation

From: Scott J. Nally, Director 

Date: MAY 16 2011

Re: **Notice of Revocation of Covenant Not to Sue**
Issued to Superior Fibers, Inc.
for the Superior Fibers Property, NFA Letter 03NFA161

Pursuant to Ohio Revised Code Section 5709.87(E), you are hereby notified that the Covenant Not to Sue previously issued to Superior Fibers, Inc. on March 22, 2005 for the Superior Fibers Property has been revoked in accordance with Ohio Revised Code Section 3746.12(B). A copy of the Director's Final Findings and Orders revoking the Covenant Not to Sue is attached.

CNS Property Name: Superior Fibers Property
CNS Property Acreage: 32.076 acres

Property Address: 499 North Broad Street, Village of Bremen,
Fairfield County, Ohio 43107

Property owners and addresses as listed by County Parcel Number:

For Fairfield County Permanent Parcel Number 0350128710:

Acreage: 8.43 acres
Current Owner's Name: Superior Bremen Composites II LLC
Owner's Address: 499 N. Broad Street, Bremen, Ohio 43107
Taxing District: Village of Bremen, Fairfield Union LSD

For Fairfield County Permanent Parcel Number 0350128700:

Acreage: 16.11 acres
Current Owner's Name: Superior Bremen Filtration, LLC
Owner Address: 499 N. Broad Street, Bremen, Ohio 43107
Taxing District: Village of Bremen, Fairfield Union LSD

Notice of Revocation of Covenant Not to Sue [ORC Section 5709.87(E)]
Superior Fibers 03NFA161
Page 2

For Fairfield County Permanent Parcel Number 0340017300:

Acreage: 7.53 acres
Current Owner's Name: Superior Bremen Filtration, LLC
Owner Address: 499 N. Broad Street, Bremen, Ohio 43107
Taxing District: Unincorporated, Fairfield Union LSD

Date Order Revoking Covenant Not to Sue Issued: MAY 16 2011

Attached, for your information, is a copy of the legal description and property location map for the Superior Fibers property.

If additional information regarding the Superior Fibers property or the revocation of the Covenant Not to Sue is required, I suggest you first contact Ray Moreno with Ohio EPA's Central District Office at (614) 728-3833.

cc:

Mayor Tad Moyer, Village of Bremen
Hon. Barbara Curtiss, Fairfield County Auditor
Amy Alduino, Office of Urban Development, Dept. of Development

Ohio EPA, VAP Files (# 03NFA161), CO, DERR

ec: Tiffani Kavalec, Manager, Ohio EPA, CO, DERR/ACRE
Debbie Strayton, Manager, Ohio EPA, CDO, DERR
Marty Cooper, Ohio EPA, CO, Legal

Notice of CNS Revocation to Tax Commissioner
Superior Fibers 03NFA161
Fairfield County, Ohio

Copy of Director's Revocation Order
Superior Fibers Property
NFA Number 03NFA161

OHIO E.P.A.

MAY 16 2011

BEFORE THE

OHIO ENVIRONMENTAL PROTECTION AGENCY

ENTERED DIRECTOR'S JOURNAL

In the matter of

Superior Fibers, Inc.
aka Superior Fibers, LLC
499 North Broad Street
Bremen, OH 43107

**Revocation of Covenant
Not to Sue**

**Director's Final Findings
and Orders**

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

Regarding property known as:

Superior Fibers Property
499 North Broad Street
Bremen, OH 43107

By Dmytro Cassler Date: 5-16-11

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

I. FINDINGS

1. A No Further Action Letter, No. 03NFA161 ("NFA Letter"), was submitted on February 19, 2003 to the Ohio EPA under the Voluntary Action Program ("VAP") on behalf of Superior Fibers, Inc. (also known as Superior Fibers, LLC) (the "Volunteer"), by Dennis A. Smalley, then a certified professional, No. CP197, as defined in ORC §3746.01(E) (effective September 28, 1994) and OAC Rule 3745-300-01(A)(8) (effective October 21, 2002).
2. On March 22, 2005, Ohio EPA issued a Covenant Not to Sue ("Covenant") to the Volunteer regarding the approximately 32.076-acre property located at 499 North Broad Street, Bremen, Fairfield County, Ohio (the "Property"). A copy of the legal description is attached as Exhibit A and incorporated herein as if fully rewritten. The Covenant was recorded on December 22, 2006 with the Fairfield County Recorder at DR Book 1452, Pages 911 to 980. The Covenant incorporated by reference an Operation and Maintenance Agreement ("O&M Agreement") and Operation and Maintenance Plan ("O&M Plan") to demonstrate continued compliance with VAP applicable standards for ground water at the Property boundary.
3. Based on the information contained in the NFA Letter and the implementation of the O&M Plan and Agreement, and all other conditions set forth in the Findings and Orders, the Director of the Ohio EPA determined that the NFA Letter demonstrated the Property met the VAP applicable standards in accordance with OAC Chapter 3745-300 (effective October 21, 2002), including but not limited to:

- a. Commercial and industrial land use category direct contact soil standards for hazardous substances, in accordance with Tables III and V of OAC 3745-300-08 for generic numerical standards.
 - b. Soil standards based on volatile emissions of volatile organic compounds ("VOCs") from soil to indoor air, derived through Property-specific risk assessment procedures in accordance with OAC 3745-300-09 for human receptor exposures not related to direct contact with soils.
 - c. Ground water standards for human exposures related to potable use of ground water on or underlying the Property. Although the ground water underlying the Property contained chemicals of concern in excess of unrestricted potable use standards, the VAP ground water applicable standards were met through the prohibition against extraction of ground water for potable purposes at or underlying the Property as described by the recorded Declaration of Use Restrictions.
 - d. Ground water standards based on volatile emissions of VOCs from ground water to indoor air, derived through property-specific risk assessment procedures in accordance with OAC Rule 3745-300-09(D) for human receptor exposures not related to potable use of ground water.
 - e. Surface water standards, determined in accordance with OAC Rule 3745-300-08(E), at the Property.
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 - g. Sediment standards for exposures to ecological receptors, determined in accordance with OAC Rule 3745-300-09(F)(2)(b), at the Property.
4. Pursuant to the O&M Plan and Agreement, the Volunteer conducted quarterly ground water monitoring at the Property including monitoring wells situated near the Property boundary. Irregular ground water monitoring results led to Ohio EPA's participation with respect to the collection and splitting of ground water samples obtained during the February 2006 sampling event.
 5. The February 2006 quarterly ground water sampling event indicated that chemicals of concern ("COCs") were detected in nine of the 16 wells that comprised the early warning well network at the Property boundary. Confirmatory sampling conducted on March 16, 2006 verified the existence of COCs in five of the early warning wells. The sample results indicated that contaminants in ground water had migrated beyond the Property boundary, resulting in a failure of VAP applicable standards.
 6. The 2005 O&M Plan provided for the implementation of a contingent ground water remediation plan in the event that COCs were reported in any of the early warning wells on the Property. However, the Volunteer did not implement the contingent ground water remediation plan.

7. An investigation into ground water sampling data and other work previously submitted by former Certified Professional Dennis Smalley lead to a disciplinary action by Ohio EPA that included revocation of his VAP certified professional certification. The Volunteer removed Mr. Smalley from the project.
8. Many issues associated with the failure to report, properly sample and implement the 2005 O&M Plan, or timely modify the 2005 O&M Plan are the result of the improper activities of Mr. Smalley. Pursuant to ORC §3746.12(B)(1), the responsibility for demonstrating and maintaining compliance with VAP applicable standards at the Property under the Covenant remains with the Volunteer.
9. The Volunteer retained the services of CH2M Hill in June 2006 to evaluate the extent of ground water contamination and propose an alternate contingency plan for remediation of the ground water at the Property in order to demonstrate compliance with the VAP applicable standards.
10. On December 13, 2006, Ohio EPA sent the Volunteer a Notice of Failure to Comply with Applicable Standards and a proposed compliance schedule agreement that provided for an opportunity to cure in accordance with ORC §§3746.12(B)(2) and (B)(3).
11. Pursuant to ORC §3746.12(B)(3), the compliance schedule agreement was fully executed between Ohio EPA and the Volunteer on January 26, 2007. The compliance schedule agreement provided a schedule for amending the 2005 O&M Plan and restoring the Property to compliance with VAP applicable standards as set forth in OAC Chapter 3745-300.
12. Quarterly ground water monitoring reported in May, August and September 2007 included the results from several newly installed off-property wells. The ground water sample results demonstrated that the contaminated ground water plume extended well beyond the Property's boundary. Detections of COCs in ground water were reported in off-property ground water monitoring wells that were located within approximately 400 feet of the village of Bremen's municipal wellfield.
13. On August 11, 2008, the Director approved the March 2008 Addendum to the 2005 O&M Plan pursuant to the compliance schedule agreement and ORC §3746.12(B)(3). The March 2008 Addendum provided for the implementation of additional remedies at the Property to achieve compliance with VAP applicable standards for ground water at the Property boundary by May 15, 2011.
14. The November 2010 ground water sampling results indicated that at least eleven wells located along the Property boundary remained in noncompliance with the VAP applicable standards. The February 2011 preliminary ground water sampling results indicated that at least eight wells located along the Property boundary remained in noncompliance with VAP applicable standards. In addition, Ohio EPA conducted sampling of several off-property wells during the November 2010 sampling event. The results indicated no improvement in ground water quality for those off-property wells.
15. On February 22, 2011, Ohio EPA met with representatives of the Volunteer, and the prior owner of the Property, Reichhold Chemicals, Inc. ("Reichhold Chemicals") to discuss the

status of compliance with the compliance schedule agreement and various options available to the Volunteer. Ohio EPA informed the Volunteer and Reichhold Chemicals that unless compliance with the VAP applicable standards for ground water at the Property boundary was demonstrated by May 15, 2011 in accordance with the compliance schedule agreement, Ohio EPA would recommend to the Director that the Covenant be revoked in accordance with ORC §3746.12(B)(4).

16. By letter from Attorney Chris Schraff dated March 14, 2011, Ohio EPA was informed that CH2M HILL, the firm retained by the Volunteer and Reichhold Chemicals would discontinue certain activities under the March 2008 Addendum to the 2005 O&M Plan, and that Reichhold Chemicals intended to terminate the services required by a certified professional under the VAP. To date, the Volunteer has not indicated how it will proceed regarding the Property.
17. Pursuant to ORC §3746.12(B)(3), the compliance schedule agreement, and the approved 2008 Addendum to the O&M Plan, the Volunteer was required to bring the Property into compliance with VAP applicable standards for ground water at the Property boundary by May 15, 2011.
18. The Volunteer has not complied with ORC §3746.12(B)(3) and the timeline established in the approved March 2008 Addendum to the 2005 O&M Plan. Based on the ground water monitoring results as reported and confirmed in early 2006, and most recently in 2010, ground water has never been in compliance with the VAP applicable standards at the Property boundary from the time the NFA Letter was submitted in February 2003 until May 2011.

II. SUMMARY

19. Pursuant to ORC §3746.12(B)(1), the Covenant shall remain in effect for as long as the Property continues to comply with the VAP applicable standards upon which the Covenant is based, as referenced in the March 22, 2005 Findings and Orders approving the Covenant issued to the Volunteer for the Property, including but not limited to the 2005 O&M Plan and Agreement.
20. As provided in ORC Chapter 3746 and OAC Chapter 3745-300, nothing in the Covenant shall be construed to limit or waive the Director's authority to revoke the Covenant in response to any of the circumstances for revocation of the Covenant.
21. Pursuant to ORC §3746.12(B)(4), if the Director finds that a person with whom the Director has entered into a compliance schedule agreement has failed to return the Property to compliance with the VAP applicable standards within the time established in the agreement, the Director by issuance of an order as a final action under ORC Chapter 3745, shall revoke the Covenant issued for the Property.
22. The Property does not meet the VAP applicable standards as provided for in ORC Chapter 3746, OAC Chapter 3745-300 and the compliance schedule agreement. The Volunteer has failed to demonstrate compliance with VAP applicable standards for ground water at the

Property boundary, in violation of §3746.12(B)(1), the compliance schedule agreement, the March 2008 Addendum to the O&M Plan and the Conditions and Limitations of the Covenant.

23. Therefore, the Covenant issued to the Volunteer for the Property must be revoked in accordance with ORC §3746.12(B)(4).

III. ORDERS

REVOCAION

1. Pursuant to ORC §3746.12(B)(4), upon the issuance of these Findings and Orders, the Covenant Not to Sue for the Property, as described in NFA Letter No. 03NFA161 as amended, issued to Superior Fibers, Inc. (now known as Superior Fibers, LLC) on March 22, 2005, and recorded on December 22, 2006 with the Fairfield County Recorder at DR Book 1452, Pages 911 to 980, is hereby revoked.

REQUIREMENT TO RECORD FINDINGS AND ORDERS / REVOCATION OF COVENANT NOT TO SUE

2. Within 30 days after the issuance of these Findings and Orders, the Volunteer shall:
 - a. File for recording a copy of these Findings and Orders revoking the Covenant with the Fairfield County Recorder's Office in the same manner as a deed to the Property pursuant to ORC § 3746.12, §3746.14 and §317.08.
 - b. Submit to Ohio EPA a copy of these Findings and Orders that shows the filing date stamp of the Fairfield County Recorder's Office or other reliable information that verifies the recording of the Findings and Orders in accordance with this Order. The submission shall include a cover letter that identifies "*Recorded – Revocation of Covenant Not to Sue for NFA Letter No.03NFA161.*" The submission shall be delivered either (1) electronically to the DERR Records Management Officer at Ohio EPA's Central Office, at records@epa.state.oh.us or (2) by U.S. mail or by other reliable means to both Ohio EPA's Central Office, 50 West Town Street, Suite 700, P.O. Box 1049, Columbus, OH 43216-1049, Attention: DERR Records Management Officer and Ohio EPA's Central District Office, 50 W. Town Street, Suite 700, P.O. Box 1049, Columbus, OH 43216-1049, Attention: DERR Site Coordinator for Superior Fibers, LLC.

IV. PUBLIC NOTICE AND RIGHT TO APPEAL

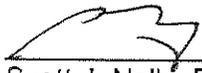
This revocation of the Covenant is a final action of the Director and will be public noticed in accordance with OAC Rule 3745-47-07. The action may be appealed to the Environmental Review Appeals Commission ("Commission"). The appeal must be in writing and set forth the action complained of and the grounds upon which the appeal is based. The appeal must be filed

with the Commission within thirty days after notice of the action. (See ORC §3745.04). The appeal must be accompanied by a filing fee of \$70.00 which the Commission, in its direction, may reduce if by affidavit it is demonstrated that payment of the full amount of the fee would cause extreme hardship. Notice of the filing of the appeal shall be filed with the Director within three days after the appeal is filed with the Commission. Ohio EPA requests a copy of the appeal be served upon the Ohio Attorney General's Office, Environmental Enforcement Section. The appeal may be filed with the Commission at 309 South Fourth Street, Room 222, Columbus, Ohio 43215.

V. RESERVATION OF RIGHTS

Nothing in these Findings and Orders shall be construed to limit the authority of the Ohio EPA to seek relief for other noncompliance with ORC Chapter 3746 or OAC Chapter 3745-300, or noncompliance with other applicable law, including ORC Chapters 3704, 3734, and 6111 or any rules adopted under those chapters.

IT IS SO ORDERED:



Scott J. Nally, Director
Ohio Environmental Protection Agency

MAY 16 2011

Date

Director's CNS Revocation Orders
Superior Fibers 03NFA161
Fairfield County, Ohio

Exhibit A
Legal Description
Superior Fibers Property
NFA Number 03NFA161

LEGAL DESCRIPTION

EXHIBIT A

I. And being a part of the Northeast Quarter of Section 16, Township 16, Range 17, beginning at a stone at the Northeast corner of Section 16; thence South 1903.45 feet to a point in State Route No. 664; thence North 89° West 526.11 feet (passing an iron pin at 30 feet) to an iron pin on the East boundary of T. & O. C. Railroad right of way; thence North 2° 44' West 1898.96 feet on East boundary of T. & O. C. Railroad right of way to an iron pin on North Section line; thence South 89° 47' East 616.68 feet on the Section line to the place of beginning containing 24.916 acres, more or less and subject to all legal road right of ways.

Grantor claims title by deed of conveyance recorded in Deed Book 327, page 411, Recorder's Office, Fairfield County, Ohio.

II. Being in the Southeast corner of Section 9, Township 16, Range 17 and bounded as follows: Bounded on the North by State Route 37, on the East by the section line which is the boundary of Sections 9 and 10 lying on the property line of State Route 664. Bounded on the South by the section line which is the boundary between Sections 9 and 16 lying on the property line formally known as County Road No. 47. Bounded on the West by the East boundary of the right of way of the New York Central Railroad. Beginning at a spike nail on the Southwest corner 'A' at the intersection of the Eastern boundary of the railroad right of way and the section line common to Sections 9 and 16. Thence with the said right of way N. 3° 51' E. (magnetic bearing, true bearing N. 2° 36' E.) for a distance of 411 feet to corner 'C', thence with the property line of State Route 37 bearing N. 81° 20' 30" E. a distance of 662 feet to corner 'D' which is the intersection of the property line of State Route 37 with that of State Route 664 the latter lying on the section line common to Sections 9 and 10. Thence S. 5° 23' 48" W. with the property line of State Route 664 and the section line common to Sections 9 and 10 a distance of 587 feet to corner 'G' the intersection of the property lines of State Route 664 and formerly known as County Road 47 being also the intersection of the section lines common to Sections 9 and 10 and common to Sections 9 and 16 respectively. Thence with the property line of formerly known as County Road 47 which is on the section line common to Sections 9 and 16 bearing N. 83° 36' 10" W. a distance of 616 feet to the beginning corner 'A', containing 7.16 acres, more or less.

Grantor claims title by deed of conveyance recorded in Deed Book 379, page 588, Recorders Office, Fairfield County, Ohio.

DEEDS APPROVED FOR FILING
 FAIRFIELD COUNTY, OHIO
 BY J.K.
 DATE 5/11/84

Notice of CNS Revocation to Tax Commissioner
Superior Fibers 03NFA161
Fairfield County, Ohio

Legal Description of the NFA Property
Superior Fibers, 03NFA161

LEGAL DESCRIPTION

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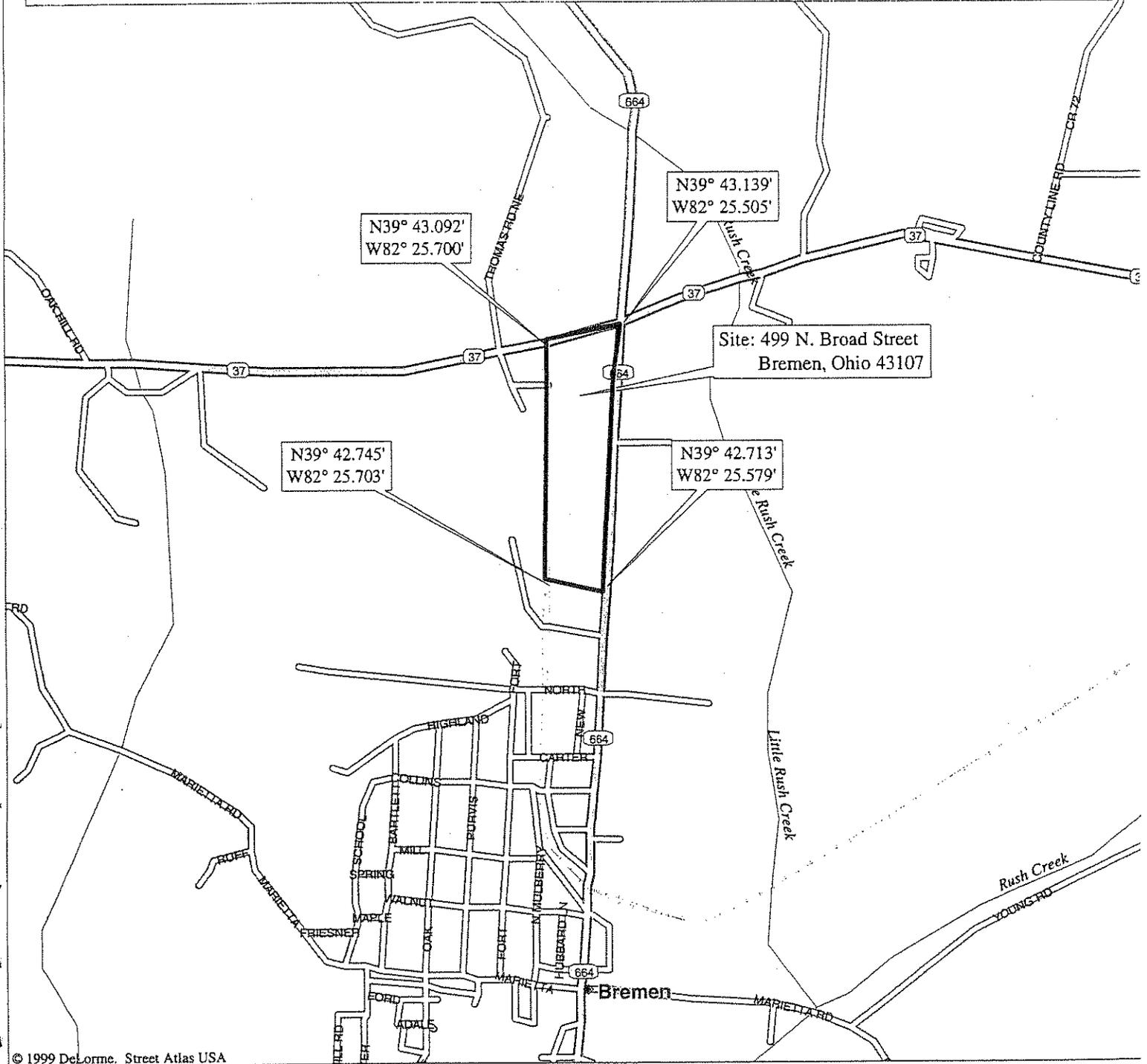
DISCRETION APPROVED FOR RECORDER
 FAIRFIELD CO OHIO ROBERT C. LEE, REC'D
 BY g.k.

DATE 5/11/84

Notice of CNS Revocation to Tax Commissioner
Superior Fibers 03NFA161
Fairfield County, Ohio

Property Location Map
Superior Fibers Property
03NFA161

Figure 1. Site Map: Superior Fibers, Inc.



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Mag 15.00
Wed Feb 16 11:12 2005
Scale 1:15,625 (at center)

1000 Feet

500 Meters

-  Local Road
-  State Route
-  Railroad
-  Small Town
-  River/Canal
-  Intermittent River