



State of Ohio Environmental Protection Agency

STREET ADDRESS:

Lazarus Government Center
50 W. Town St., Suite 700
Columbus, Ohio 43215

TELE: (614) 644-3020 FAX: (614) 644-3184
www.epa.state.oh.us

MAILING ADDRESS:

P.O. Box 1049
Columbus, OH 43216-1049

CERTIFIED MAIL #91 7108 2133 3932 4450 4780

Don and Betty Gastineau
134 Carmarthen Way
Granville, OH 43023

**Re: Audit of No Further Action Letter 98NFA042: Custom Cartons Property
Project Number 145001912004
Licking County**

Dear Mr. and Mrs. Gastineau:

The purpose of this letter is to notify you that the Ohio Environmental Protection Agency (Ohio EPA) has completed an audit of the no further action (NFA) letter issued under the authority of Chapter 3746 of the Ohio Revised Code (ORC) for the Custom Cartons, Inc. property, formerly located at 717 O'Neill Drive, Hebron, Licking County, Ohio. The audit findings report is enclosed. Ohio EPA has also issued findings of the audit to Dennis A. Smalley, the certified professional (CP), and the current property owner. As you are aware, Mr. Smalley submitted the NFA letter to the Ohio EPA on December 8, 1998 with a request for a covenant not to sue (CNS) on behalf of you (the volunteer) and Custom Cartons, Inc. Ohio EPA issued the CNS on February 8, 1999 and amended it on June 10, 1999.

Ohio Administrative Code (OAC) 3745-300-14(G) directs the Ohio EPA to audit any NFA letters submitted in any of the ten preceding calendar years that meet any of the criteria of the mandatory audit pool. OAC 3745-300-14(A)(3)(d) defines the mandatory audit pool to include NFA letters that were prepared by a CP whose certification was subsequently revoked. The December 22, 2006 revocation of Mr. Smalley's Voluntary Action Program (VAP) CP certification places into the mandatory audit pool all the NFA letters that Mr. Smalley issued and submitted as a CP. For this reason, the NFA letter that Mr. Smalley issued and submitted on December 8, 1998 for the Custom Cartons, Inc. property entered the mandatory audit pool as defined by rule. Additionally, OAC 3745-300-14 describes the purposes for conducting audits and the scope of activities that may be conducted by Ohio EPA as part of the audit.

In accordance with the ORC Chapter 3746 and OAC 3745-300-14, the audit was conducted to 1) determine whether the property meets applicable standards established in the VAP rules; 2) review the qualifications and work performed by the CP to determine whether the CP's performance resulted in the issuance of an NFA letter that is not consistent with applicable standards; and 3) review the qualifications and work performed by the certified laboratory to determine whether its performance resulted in the issuance of an NFA letter that is not consistent with applicable standards.

Ted Strickland, Governor
Lee Fisher, Lieutenant Governor
Chris Korleski, Director

Summary of Audit Findings

The following summarizes the significant audit findings. For a complete explanation of the audit findings, see the enclosed Tier II audit findings report.

After reviewing the NFA letter and supplemental information, Ohio EPA could not verify that the ground water met unrestricted potable use standards relied on by the NFA letter and resulting covenant not to sue. To verify compliance with the unrestricted potable use standards, Ohio EPA conducted a Tier II audit intrusive investigation. The investigation consisted of the collection and analysis of soil and ground water samples at the property in mid-December 2007. The results demonstrate that the property is in compliance with VAP applicable standards for both ground water and soil; that is, the property meets unrestricted land use standards for soil and unrestricted potable use standards for ground water.

Although, the overall audit findings demonstrate that the NFA letter, as amended, was not issued in accordance with the requirements set forth in ORC Chapter 3746 and OAC Chapter 3745-300, the deficiencies of the NFA letter do not affect the property's compliance with VAP applicable standards. The deficiencies concern Mr. Smalley's methods for reaching conclusions that were not supported by Phase II assessment data or by reliable demonstrations. As long as the property's use continues to comply with the conditions of the CNS, the release of liability provided by Ohio EPA will remain in good standing.

If you have any questions concerning this letter, or any audit findings made by Ohio EPA, please contact Amy Yersavich, Manager of the VAP, at (614) 644-2285 or Fred Myers at (614) 728-3830.

Sincerely,



Chris Korleski
Director

Enclosure: Audit Findings Report

c: Fred Myers, DERR/CDO
Deborah Strayton, DERR/CDO
Amy Yersavich, Manager, VAP
Martin Smith DERR/CO/VAP
Sue Kroeger, Legal
CO and District Files (98NFA042)



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P.O. Box 1049
Columbus, OH 43216-1049

CERTIFIED MAIL #91 7108 2133 3932 4450 4797

Mr. Paul Leary
Legend, Smelting and Recycling, Inc.
717 O'Neill Drive
Hebron, OH 43025

**Re: Audit of No Further Action Letter 98NFA042: Custom Cartons Property
Project Number 145001912004
Licking County**

Dear Mr. Leary:

The purpose of this letter is to notify you that the Ohio Environmental Protection Agency (Ohio EPA) has completed an audit of the no further action (NFA) letter issued under the authority of Chapter 3746 of the Ohio Revised Code (ORC) for the Custom Cartons, Inc. property, located at 717 O'Neill Drive, Hebron, Licking County, Ohio. The audit findings report is enclosed. Ohio EPA has also issued findings of the audit to Dennis A. Smalley, the certified professional (CP), and Don and Betty Gastineau and Custom Cartons, Inc. the volunteer who originally requested the covenant not to sue (CNS) for the property. As you are aware, the CP submitted the NFA letter to the Ohio EPA on December 8, 1998, with a request for a CNS on behalf of the volunteer. Ohio EPA issued the CNS on February 8, 1999, and amended it on June 10, 1999.

Ohio Administrative Code (OAC) 3745-300-14(G) directs the Ohio EPA to audit any NFA letters submitted in any of the ten preceding calendar years that meet any of the criteria of the mandatory audit pool. OAC 3745-300-14(A)(3)(d) defines the mandatory audit pool to include NFA letters that were prepared by a CP whose certification was subsequently revoked. The December 22, 2006, revocation of Mr. Smalley's Voluntary Action Program (VAP) CP certification places into the mandatory audit pool all the NFA letters that Mr. Smalley issued and submitted as a CP. For this reason, the NFA letter that Mr. Smalley issued and submitted on December 8, 1998, for the Custom Cartons, Inc. property entered the mandatory audit pool as defined by rule. Additionally, OAC 3745-300-14 describes the purposes for conducting audits and the scope of activities that may be conducted by Ohio EPA as part of the audit.

In accordance with the ORC Chapter 3746 and OAC 3745-300-14, the audit was conducted to 1) determine whether the property meets applicable standards established in the VAP rules; 2) review the qualifications and work performed by the CP to determine whether the CP's performance resulted in the issuance of an NFA letter that is not consistent with applicable standards; and 3) review the qualifications and work performed by the certified laboratories to determine whether their performance resulted in the issuance of an NFA letter that is not consistent with applicable standards.

Ted Strickland, Governor
Lee Fisher, Lieutenant Governor
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The following summarizes the significant audit findings. For a complete explanation of the audit findings, see the enclosed Tier II audit findings report.

After reviewing the NFA letter and supplemental information, Ohio EPA could not verify that the ground water met unrestricted potable use standards relied on by the NFA letter and resulting covenant not to sue. To verify compliance with the unrestricted potable use standards, Ohio EPA conducted a Tier II audit intrusive investigation. The investigation consisted of the collection and analysis of soil and ground water samples at the property in mid-December 2007. The results demonstrate that the property is in compliance with VAP applicable standards for both ground water and soil; that is, the property meets unrestricted land use standards for soil and unrestricted potable use standards for ground water.

Although the overall audit findings demonstrate that the NFA letter, as amended, was not issued in accordance with the requirements set forth in ORC Chapter 3746 and OAC Chapter 3745-300, the deficiencies of the NFA letter do not affect the property's compliance with VAP applicable standards. The deficiencies concern Mr. Smalley's methods for reaching conclusions that were not supported by Phase II assessment data or by reliable demonstrations. As long as the property's use continues to comply with the conditions of the CNS, the release of liability provided by Ohio EPA will remain in good standing.

We appreciate your cooperation and assistance. If you have any questions concerning this letter, or any audit findings made by Ohio EPA, please contact Amy Yersavich, Manager of the VAP, at (614) 644-2285 or Fred Myers at (614) 728-3830.

Sincerely,



Chris Korleski
Director

Enclosure: Audit Findings Report

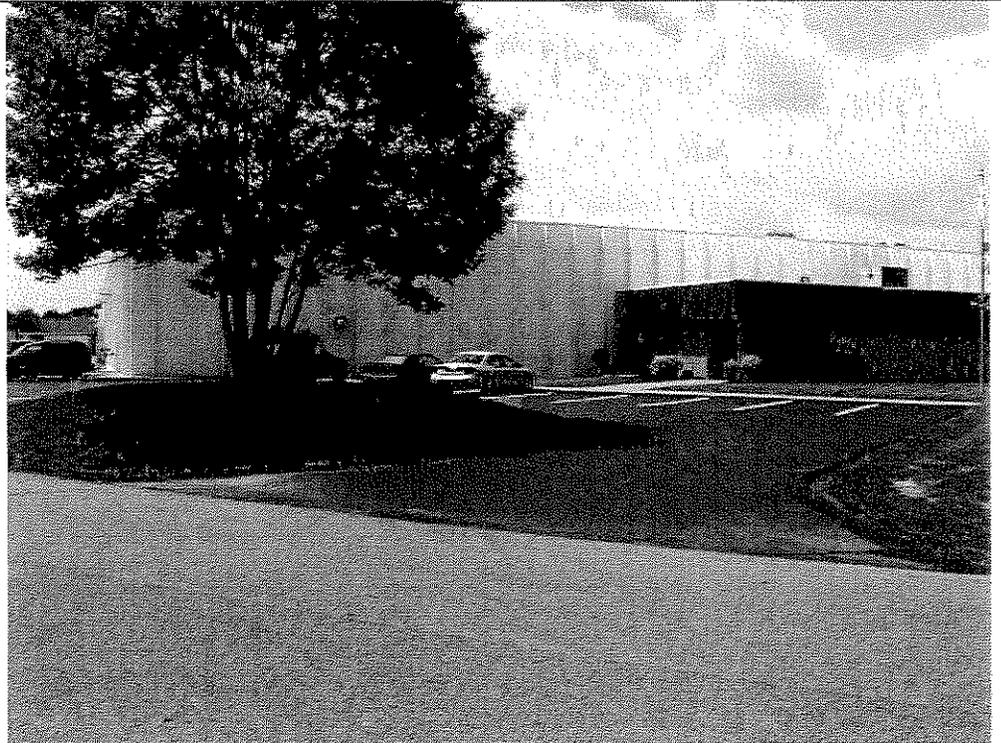
- c: Fred Myers, DERR/CDO
- Deborah Strayton, DERR/CDO
- Amy Yersavich, Manager, VAP
- Martin Smith, DERR/CO/VAP
- Sue Kroeger, Legal
- CO and District Files (98NFA042)



State of Ohio
Environmental Protection Agency

Division of Emergency and Remedial Response

**Custom Cartons Property
Voluntary Action Program
No Further Action Letter Tier II Audit Findings**



April 2008

Ted Strickland, Governor
Chris Korleski, Director

**Ohio Environmental Protection Agency
Ohio Voluntary Action Program
NFA Letter Mandatory Audit**

Custom Cartons Property, Hebron, Ohio
No Further Action Letter No. 98NFA042
TIER II AUDIT FINDINGS
April 2008

Name and Address of Property: Custom Cartons, Inc.
717 O'Neill Avenue
Hebron, Ohio 43025

Name and Address of Volunteer: Don and Betty Gastineau
134 Carmethen Way
Granville, Ohio 43023

Certified Professional: Dennis A. Smalley, CP Number 197

Certified Laboratories: DLZ Laboratories, Inc., CL Number
00014 Aqua Tech Environmental Labs,
Inc. (ATEL), CL Number 0009

Date NFA Letter Submitted: December 8, 1998; Amendments:
December 24, 1998 and January 4,
1999

CNS Issued: February 8, 1999; Amended June 10,
1999

County and Ohio EPA District: Licking County, CDO

INTRODUCTION

Ohio Administrative Code (OAC) 3745-300-14(G) directs the Ohio Environmental Protection Agency (Ohio EPA) to audit no further action (NFA) letters submitted in any of the ten preceding calendar years that meet any of the criteria of the mandatory audit pool. OAC 3745-300-14(A)(3)(d) defines the mandatory audit

pool to include NFA letters that were prepared by a certified professional (CP) whose certification was subsequently revoked. The December 22, 2006 revocation of Dennis A. Smalley's Voluntary Action Program (VAP) CP certification places into the mandatory audit pool all the NFA letters that Mr. Smalley issued and submitted as a CP. For this reason, the NFA letter that Mr. Smalley issued and submitted on December 8, 1998 for the Custom Cartons, Inc. property entered the mandatory audit pool as defined by rule. Additionally, OAC 3745-300-14 describes the purposes for conducting audits and the scope of activities that may be conducted by Ohio EPA as part of an audit.

According to OAC 3745-300-14, NFA letter audits can be conducted for the following purposes: (1) to determine whether the properties comply with VAP applicable standards; (2) to review the qualifications and performance of the CP who issued the NFA letter; and (3) to review the qualifications and performance of the certified laboratories (CL) that performed work to support the NFA letter. The audit rule makes the distinction between Tier I and Tier II audit procedures in describing the variable levels of effort that NFA letter audits may be conducted. Tier I audits may be limited to a review of all pertinent documents that were utilized by the CP in issuing an NFA letter but may also include a site walkover and review of additional records held by the volunteer, the CL, or property owner. Tier II audits involve additional activities including additional site inspections and sampling activities that are needed to determine whether the property complies with VAP applicable standards.

PROPERTY BACKGROUND

The Director of the Ohio EPA issued a covenant not to sue (CNS) for the Custom Cartons Hebron, Ohio property effective February 8, 1999 and issued an amendment to the CNS on June 10, 1999. The property is a 6.075 acre tract in the Newark Ohio Industrial Park (**See Figure 1**). The property is bordered by commercial/industrial operations. Ownership since 1970 consisted of Licking County, Massey-Ferguson, Custom Cartons, Inc., JPJ Investments, LLC, and currently Omni Property Investments, LLC.

The property was used as farmland, a hand tool manufacturing facility (Larson Manufacturing), a tractor part distribution facility (Massey-Ferguson), and a cardboard box manufacturing/assembly facility (Custom Cartons and Tecumseh Corrugated Box Company). Currently, Legend Smelting and Recycling is using the property to recycle metals from catalytic converters and other sources.

Larson Manufacturing occupied the property from approximately 1971-1987. The company operated as a RCRA large quantity generator and is the likely source of the chemicals of concern (COCs). Larson generated hazardous wastes from chrome electroplating, electrostatic painting, and degreasing operations. Wastes were stored on a cement pad at the west end of the property. COCs associated

with former activities are metals and chlorinated solvents.

Prior Property Assessments

Prior to the submittal of the NFA letter, there were two known environmental assessments of the property. Both assessments were related to property transfers. HC Nutting completed a site investigation in 1993 for Massey-Ferguson, and Hull and Associates completed a site investigation in 1997 for JPJ LLC and Tecumseh Corrugated Box Company. The HC Nutting investigation was a Phase I assessment of the property. Hull and Associates completed a Phase I and Phase II assessment. Both investigations identified the cement pad and treatment building at the west side of the property as the only area of concern. The Hull and Associates Phase II sampling data indicated that there were releases of chlorinated solvents to the soil. The data also indicated that the upper-most water bearing zone was potentially contaminated with volatile organic compounds (VOCs).

Smalley & Associates, working under the direction of Dennis Smalley, completed a VAP Phase I assessment report on July 6, 1998 and a VAP Phase II assessment report on December 6, 1998. At the request of Mr. Smalley, Ohio EPA provided technical assistance for the review of the Phase I and Phase II assessment reports. The technical assistance for the Phase I assessment was completed under 98TA083, and comments were submitted to Mr. Smalley on August 6, 1998. The technical assistance for the Phase II assessment was completed under 98TA083-1, and comments were submitted to Mr. Smalley on December 1, 1998.

Mr. Smalley requested technical assistance of Ohio EPA to review the Phase I and II reports for compliance with VAP requirements. He also requested technical assistance of Ohio EPA to review a draft site characterization report to determine needed information to demonstrate that a thin sand zone did not meet minimum criteria for actionable ground water. For the Phase I report, Ohio EPA recommended that he clarify some sections, re-format the report; and conduct additional investigations of the identified area for the Phase II assessment. For the Phase II report, Ohio EPA asked for further explanation and clarifications regarding the investigation of the identified area and pointed out some omissions. Ohio EPA commented on the property-specific risk assessment and the SESOIL model. To evaluate for actionable ground water, Ohio EPA also suggested that he conduct hydraulic conductivity testing of the sand lens.

NFA Letter Overview

The NFA letter was submitted on December 8, 1998 and amended by Mr. Smalley on December 24, 1998 and January 4, 1999. The NFA letter states that

the preparation date for the final Phase I report is July 6, 1998, and the preparation date for the final Phase II report is December 6, 1998. The review of the Phase I and II reports indicates that Mr. Smalley addressed Ohio EPA's technical assistance comments.

The NFA letter's Phase I report identified three areas of concern at the west end of the main building, in and around the wastewater treatment building. The identified areas are (1) a pit in the wastewater treatment building (sludge), (2) hazardous waste storage areas on the cement pad surrounding the wastewater treatment building; and (3) the compressor storage area inside the wastewater treatment building. The NFA letter's Phase II report incorporated the three identified areas into one identified area due to their proximity to one another (**Figure 2**). The Phase II report indicated that the soil contamination beneath the identified area extended to a depth of 14 feet below ground surface. The COCs detected include chlorinated ethenes, chlorinated ethanes, and BTEX (benzene, toluene, ethylbenzene and xylene).

Mr. Smalley did a multiple chemical adjustment to calculate applicable standards for direct contact with soil. He assumed ground water was not contaminated and conducted modeling using SESOIL to demonstrate that the contamination in soil would not leach to ground water at concentrations above the applicable, unrestricted standards for ground water. The NFA letter relies on Mr. Smalley's demonstrations that COC concentrations in soil are below applicable standards for unrestricted land-use and that the modeling supports the demonstration that COCs in soil will not leach to ground water in excess of unrestricted potable use standards.

Mr. Smalley stated in the Phase II report that he completed a RCRA generator closure of the hazardous waste storage pad for Custom Cartons in May 1998 to ensure the property's VAP eligibility. The Division of Hazardous Waste Management did not raise any eligibility issues regarding this closure. No other potential bars to VAP eligibility were identified during the NFA letter review.

The Director of Ohio EPA issued the recommended CNS for the property on February 8, 1999, based on the December 8, 1998 NFA letter, as amended. The CNS relies on unrestricted land use and unrestricted potable ground water use.

Post-Covenant Amendment of the NFA Letter

On March 11, 1999, Mr. Smalley informed Ohio EPA that arsenic was inadvertently omitted as a COC in the NFA letter and that a sediment sampling location (SED-1) should be changed to a soil sample per definition of sediment in OAC 3745-300-01. Mr. Smalley submitted an addendum to the NFA letter on March 31, 1999 to address the arsenic issue. The addendum provided his determination that arsenic was not a COC for the property, because it was found

at concentrations below naturally-occurring concentrations. Ohio EPA responded to the situation in a letter dated April 27, 1999 from the VAP manager to Don Gastineau and Mr. Smalley.

On June 10, 1999, the Director issued an amendment to the February 8, 1999 CNS. The amended CNS serves to identify Don and Betty Gastineau as persons who conducted the voluntary action in addition to Custom Cartons, Inc. As a result, the February 8, 1999 CNS applies to Custom Cartons, Don and Betty Gastineau, and their successors and assigns in interest and in ownership of the property.

Tier I Audit Findings

The overall objective of a Tier I audit is to determine whether the NFA letter demonstrates the property's compliance with the applicable standards relied upon for the NFA letter. The Tier I audit for the property consisted of a visual inspection; a review and analysis of the NFA letter documentation; and a review of additional documentation supplied by Mr. Smalley for the audit. From March 2007 to October 2007, Ohio EPA reviewed the Phase I report, Phase II report, NFA letter and addenda, and supporting documentation. Based on the Tier I audit, Ohio EPA determined that the NFA letter did not adequately demonstrate unrestricted potable use standards (UPUS) for ground water. Ohio EPA's determination is based on (1) the NFA letter did not provide adequate justification for the assumption that ground water met UPUS under OAC 3745-300-07(D)(3)(a)(i) and (2) Mr. Smalley incorrectly utilized a mathematical model (SESOIL) to support the UPUS assumption in accordance with OAC 3745-300-07 paragraphs (D)(3)(b) and (D)(3)(c).

In response to the February 28, 2007 audit information request, Mr. Smalley submitted a box of supporting documents to Ohio EPA on April 10, 2007. The contents did not contain sufficient supporting information for the audit team to adequately evaluate the NFA letter's demonstration of compliance with applicable standards relating to ground water.

On June 6 2007, Ohio EPA audit team personal conducted a visual inspection of the property. Legend Smelting and Recycling, Inc. (Legend) is occupying the property. Legend recycles the precious metals content of used catalytic converters and from other sources. All operations are conducted inside the main building. The walkover revealed that the VAP Phase I report accurately describes the property and appropriately designated the identified area. The condition of the property and the identified area are similar to that described in the NFA letter.

TIER II AUDIT INTRUSIVE INVESTIGATION

Tier II Audit Intrusive Investigation Criteria

OAC 3745-300-14(O) requires the Director of the Ohio EPA to issue NFA letter audit findings. The findings include a determination of whether VAP applicable standards, and all other requirements established under OAC Chapter 3745-300 or ORC Chapter 3746, have been met, and whether or not additional actions are required to attain compliance.

As set forth in OAC 3745-300-14(H)(2)(a), a Tier II audit can be conducted for the following reasons: (1) if the documents produced and reviewed in a Tier I audit are inadequate to substantiate the NFA letter or (2) if the Director has a reasonable belief that the NFA letter has been based on fraudulent or inaccurate information or documentation. Both criteria apply to this NFA letter property and support proceeding to a Tier II audit. OAC 3745-300-14(H)(2)(a) permits the Director to visually inspect and investigate a property, conduct sampling, and inspect conditions, equipment and practices, in order to determine compliance with applicable standards in accordance with OAC Chapter 3745-300, and ORC Chapter 3746.

Justification for Conducting a Tier II Audit Investigation

The Tier I audit of the NFA letter resulted in the determination that the information to support UPUS for ground water is insufficient and inconsistent. Therefore, Ohio EPA concluded that a Tier II audit intrusive investigation was necessary to verify if the property meets the applicable standards relied upon by the NFA letter and the resulting CNS.

Specific compliance issues noted during the Tier I audit of the NFA letter are listed below:

- The audit team could not verify the NFA letter conclusion that the property complied with the provisions for the protection of ground water as specified in OAC 3745-300-07(D)(3) and 3745-300-10(E). The NFA letter and supporting documentation did not adequately demonstrate the property complies with UPUS.
- The audit team could not verify the property's compliance with the provisions for the protection of ground water as specified in OAC 3745-300-10(E). The separation distance between the contaminated soil and ground water used in the SESOIL model and the intrinsic permeability of soil between the saturated zone and the contamination used in the SESOIL model appeared to be inadequate.

- The audit team concluded that Mr. Smalley did not conduct the SESOIL model in accordance with OAC 3745-300-07(G). The SESOIL model results predicted COCs would exceed the calculated property-specific leach based values, but these results were disregarded, without sufficient justification in the NFA letter.

Tier II Audit Field Activities

Ohio EPA conducted the Tier II audit intrusive investigation on December 11, 2007, December 12, 2007, and December 19, 2007. The main objective of the Tier II audit investigation was to determine if ground water meets UPUS in accordance with OAC 3745-300-07 (December 16, 1996) and will continue to meet UPUS in the future. The quality and quantity of data and the data collection strategy was designed to comply with the minimum requirements of the applicable VAP rules. Another objective was to determine whether COCs in soil at the property exist at levels that are not considered protective for the unrestricted uses relied upon by the NFA letter.

The Tier II intrusive investigation was completed in accordance with the approved work plan, dated December 10, 2007. Ohio EPA drilled four boreholes to below the upper-most saturated zone on December 11 and December 12, 2007. All borings were drilled with Ohio EPA's Geoprobe using the direct push method. Four foot continuous cores were collected to total depth at each boring location. The soil cores were logged and described by an Ohio EPA geologist. At each boring location, soil samples were collected for VOCs and metal analysis. Each boring was converted to a temporary monitoring well by placing a three foot long prepacked screen at the bottom of the borehole and constructing the well in accordance with the standard operating procedures (SOPs) listed in the approved work plan. After the wells were constructed, Ohio EPA measured the water level in each well and then purged and sealed them. Soil samples were transported to Ohio EPA's field facility and processed in accordance with Ohio EPA's SOP for Kemron Environmental Services, Inc. (Kemron) pickup on December 14, 2007.

On December 19, 2007, Ohio EPA returned to the property and sampled the ground water in accordance with Ohio EPA's SOPs and procedures listed in the approved work plan. Ground water samples were collected for VOC and metals analysis. After sampling, the well locations were documented using a Trimble Geo XM and relative top-of-casing elevations were measured using a laser leveler. The wells were sealed pending analytical results. On December 20, 2007, the ground water samples were taken to Ohio EPA's field facility and packaged for Kemron pickup on December 21, 2007.

Ohio EPA received the analytical results from Kemron on January 14, 2008. On January 24, 2008, Ohio EPA properly sealed the temporary monitoring wells in

accordance with the work plan and applicable regulations. A more detailed description of the field activities and sampling results are contained in the *Tier II Audit Custom Cartons Property (98NFA042) Intrusive Investigation Report* (see Exhibit 1).

TIER II AUDIT FINDINGS

The findings of the Custom Cartons property Tier II audit are divided into three general categories, 1) the property's compliance with VAP applicable standards, 2) the performance of the CP, and 3) the performance of the CLs.

Assessment of Property's Compliance with Applicable Standards

To evaluate the property's compliance with VAP applicable standards, Ohio EPA collected soil and ground water samples and analyzed them for VOCs and metals. The sample results indicate the property is in compliance with VAP applicable standards for both ground water and soil. Therefore, the data generated in the Tier II audit supports the unrestricted land use determination in the NFA letter.

Certified Professional's Performance

As part of the NFA audit, a performance review of the CP, Dennis A. Smalley, was conducted. The following findings were noted:

1. Mr. Smalley was certified pursuant to OAC 3734-300-05 to issue and submit the NFA letter and the NFA letter addenda for the property.
2. The Director has since revoked Mr. Smalley's certification because of performance issues subsequent to the issuance of the Custom Cartons NFA letter.
3. It is the obligation of a CP, as described in ORC 3746.11(A) and OAC 3745.300-13(A), to verify that a property complies with applicable standards in order to issue an NFA letter. With respect to the NFA letter for the Custom Cartons property, Mr. Smalley's performance was determined to be deficient concerning the demonstration of UPUS for ground water. The specific deficiencies are listed below:
 - Mr. Smalley assumed the property's ground water met UPUS as provided in OAC 3745-300-07(D)(3)(a)(i). The audit team determined that Mr. Smalley did not adequately demonstrate UPUS in accordance with the applicable rules. The main reason for this

determination is that the property-specific data did not adequately support the model used in the demonstration (SESOIL).

- Mr. Smalley inappropriately used the SESOIL model to demonstrate compliance with UPUS. The audit team determined that Mr. Smalley should have collected ground water samples to demonstrate compliance as required by OAC 3745-300-07(D)(1)(e), D(2), and (D)(3). The main reason for this determination is that the soil data indicated COCs were detected in multiple borings at concentrations above the modeled leaching values, and the vertical extent of the soil contamination was not defined.
- Mr. Smalley did not model the potential leaching of COCs to ground water with appropriate data inputs in accordance with OAC 3745-300-07(G). The model results could not be relied upon to show that the soil contamination at the property will continue to comply with UPUS in the future, as required by OAC 3745-300-10(E). The NFA letter lacked sufficient soil data to demonstrate that the contaminant load inputs were representative of observed conditions at the property. For example, Mr. Smalley did not have data to show the vertical extent of soil contamination, the thickness of the unimpacted soil, or the separation distance between soil contamination and the ground water zone. Without such property-specific data to input in the model, the use of the model could not be demonstrated to be field-validated, consistent with conditions throughout the modeled area, or calibrated to the geologic, hydrogeologic, and physical conditions throughout the modeled area in accordance with OAC 3745-300-07(G).
- Mr. Smalley disregarded the SESOIL modeling results without sufficient justification. The SESOIL modeling indicated that soil concentrations of 1,1,2-trichloroethane, 1,2-dichloroethane, and methylene chloride would exceed UPUS. The NFA letter stated that it was unlikely COCs would reach ground water without further elaboration. Disregarding modeling results is inconsistent with the data analysis criteria of OAC 3745-300-07(H).
- The documents submitted by Mr. Smalley in response to Ohio EPA's audit information request included a chain of custody form and analytical results for a sample location "MW-9." Data from "MW-9" were not included in the NFA letter. A hand-drawn map showed the proposed location for a "MW-9" west of the identified area, and the map indicated that it was a monitoring well. Therefore, the audit team assumed this was a ground water sample. The sampling results for "MW-9" indicated 1,1,1-

trichloroethane, 1,1-dichloroethene, methylene chloride, and vinyl chloride exceeded UPUS for ground water. The existence of this monitoring point and the analytical data caused the audit team to doubt the NFA letter's UPUS demonstration.

- Mr. Smalley issued the NFA letter based on a Phase II assessment with insufficient supporting documentation. OAC 3745-300-07(J) requires the Phase II report to include appendices for appropriate supporting documentation. The Phase II report in the NFA Letter contained no field logs or adequately completed borehole logs. The audit team determined that the Phase II documentation is deficient and could not verify the findings of the Phase II assessment without proceeding to the Tier II audit.
4. OAC 3745-300-05(F) provides standards of conduct that apply to a CP when the CP provides professional services under ORC Chapter 3746 and OAC Chapter 3745-300. In summary, a CP must act with care and diligence and fully apply his knowledge and skill at the time that professional services are provided. For this property, Mr. Smalley did not adequately perform or document field activities during the Phase II assessment using methods consistent with OAC 3745-300-07(D). Nor did Mr. Smalley perform accurate modeling to support his NFA letter's demonstration that ground water underlying the property would remain protected should any soil contamination leach to the ground water, in compliance with OAC 3745-300-07(D)(3), (G), and 3745-300-10(E). Further, he issued the NFA letter based on inconsistent data analysis under OAC 3745-300-07(H) and a Phase II assessment without adequate supporting documentation, as required by OAC 3745-300-07(H). Accordingly, Mr. Smalley failed to act with care and diligence and fully apply his knowledge and skill at the time that professional services were provided for the voluntary action, including the issuance of the NFA letter.

Certified Laboratory Performance

Two certified laboratories were used in the NFA letter, DLZ Laboratories and ATEL. Both certified laboratories appropriately performed all analyses as required under OAC 3745-300-04(E)(1) and (E)(2). No deficiencies were noted. The Tier II audit data compares favorably with the data from the certified laboratories. In general, the same COCs were detected in soil in both investigations. The Tier II audit concentrations were generally lower than the concentrations reported in the NFA letter. Therefore, no significant deviations exist between the two data sets.

Both laboratories are no longer VAP certified. Alloway purchased ATEL and was issued a revised certification in November 2006. Alloway is no longer listed as a

VAP certified laboratory. DLZ Laboratories does not exist as a laboratory (it still exists as an architectural and engineering consulting firm).

CONCLUSIONS AND RECOMMENDATIONS

The overall audit findings demonstrate that the NFA letter, as amended, was not issued in accordance with the requirements set forth in ORC Chapter 3746 and OAC Chapter 3745-300. However, the deficiencies of the NFA letter do not affect the property's compliance with VAP applicable standards. The deficiencies concern Mr. Smalley's methods for reaching conclusions that were not supported by Phase II assessment data or by reliable demonstrations.

1. Compliance with Applicable Standards

The Tier II audit data supports the unrestricted use of the property and demonstrates that the property is in compliance with VAP applicable standards. Ohio EPA has no further recommendations.

2. Certified Professional

The audit team determined that Mr. Smalley's performance resulted in an NFA letter that was not issued in compliance with the requirements set forth in ORC Chapter 3746 and OAC Chapter 3745-300; however, Mr. Smalley's performance deficiencies did not impact the property's compliance with the VAP applicable standards relied upon in the NFA letter and the CNS.

The audit revealed that Mr. Smalley's performance resulted in various deficiencies of the ground water demonstrations under OAC 3745-300-07(D), (G), and (H) and 3745-300-10(E). He did not adequately justify assumptions concerning the demonstration of UPUS for ground water; did not appropriately use modeling to demonstrate UPUS; and did not adequately document Phase II investigations to support his issuance of the NFA letter. This resulted in Ohio EPA's inability to verify that the property conditions would not cause the contamination of ground water (i.e., in violation of UPUS) and necessitated the Tier II audit.

Mr. Smalley's had his CP certification revoked on December 22, 2006 and may not apply for VAP recertification until after January 1, 2011. Because Mr. Smalley's CP certification has already been revoked, the audit team recommends no further disciplinary action as to Mr. Smalley's performance as a CP based on this audit.

3. Certified Laboratory

No recommendation is being made at this time regarding the CLs' performance. Both laboratories, ATEL or DLZ Laboratories, are no longer VAP certified. Alloway purchased ATEL, but Alloway is no longer listed as a VAP certified laboratory. DLZ Laboratories no longer exists as a laboratory. Because they are no longer VAP certified (Alloway) or exist as a laboratory (ATEL and DLZ Laboratories), audit result letters will not be sent to ATEL/Alloway or DLZ Laboratories.

FIGURES

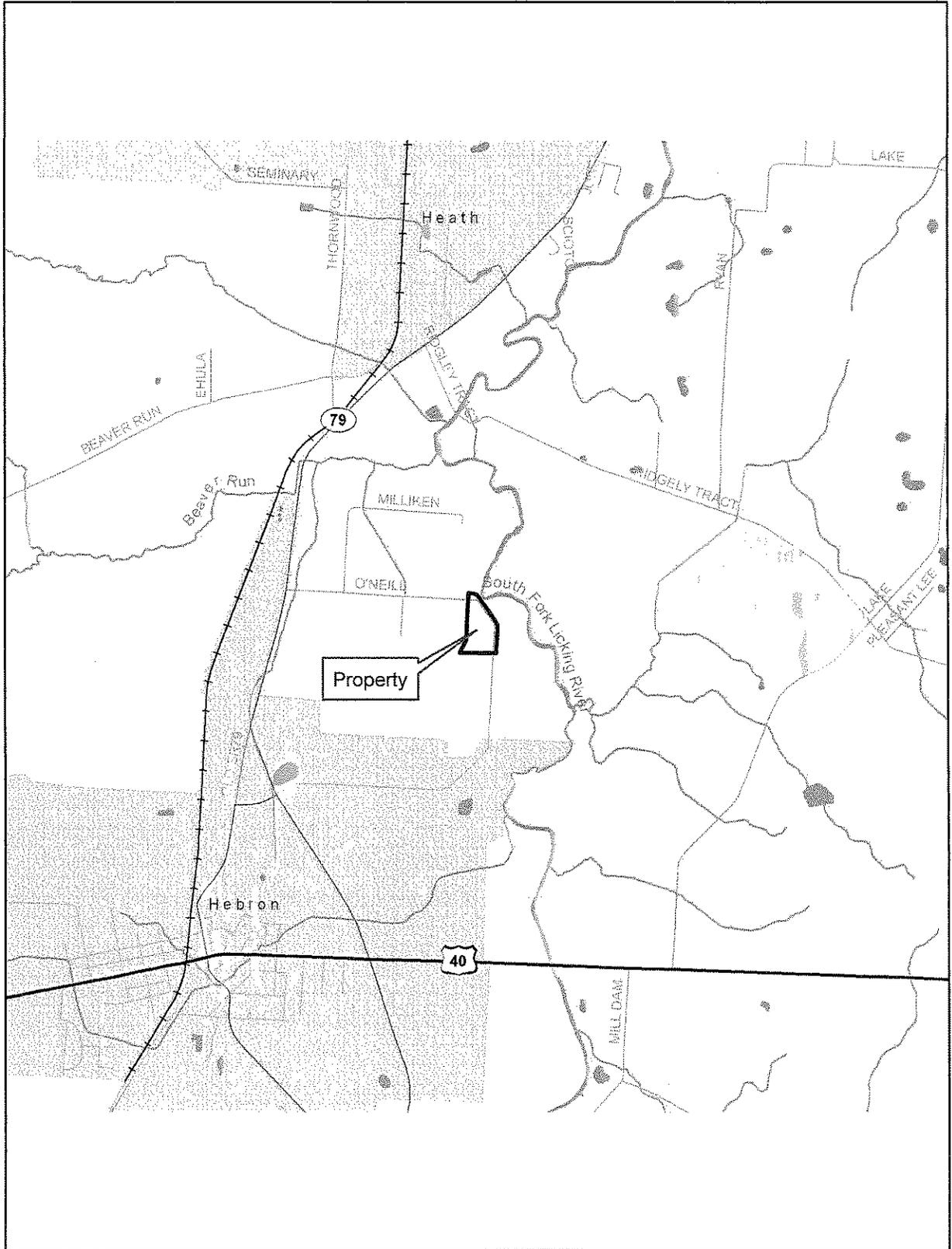


Figure 1
 Custom Cartons Tier II Findings
 Location of Property

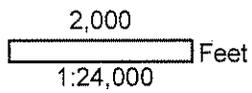




Figure 2
Custom Cartons Tier II Findings
Location of Identified Area

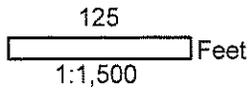


EXHIBIT 1



State of Ohio
Environmental Protection Agency

Division of Emergency and Remedial Response

**Custom Cartons Property
Voluntary Action Program
No Further Action Letter Tier II Audit
Investigation Report**



April 2008

Ted Strickland, Governor
Chris Korleski, Director

Tier II Audit Investigation Report

**Custom Cartons Property
98NFA042**

Licking County

Project ID: 145001912004

Tier II Audit Investigation Report

Custom Cartons Property (98NFA042)

Licking County
Project ID: 145001912004

Introduction

The Ohio Environmental Protection Agency (Ohio EPA) completed a Tier II audit, intrusive investigation, of the Custom Cartons property, Hebron Ohio, currently owned by Omni Investments, LLC. The purpose of this report is to present the findings of the investigation.

Ohio EPA developed a work plan for the investigation, which was finalized on December 10, 2007. The investigation followed the standard operating procedures listed in the work plan. The scope of work included the drilling of four boreholes to ground water and the collection of soil and ground water samples.

Summary of Field Work

Initial field work took place on December 11 and 12, 2007. The initial field work consisted of locating and drilling boreholes, collecting soil samples, and constructing monitoring wells. A map of the boring locations is attached as **Figure 1**. All borings were drilled with Ohio EPA's Geoprobe using the direct push dual-tube method. Boreholes were advanced with a 2.25-inch outer diameter stainless steel rod. Four-foot continuous soil cores were collected to total depth at each boring location. The soil cores were logged and described by an Ohio EPA geologist. At each boring location, soil samples were collected for volatile organic compounds (VOCs) (method SW-846-8260A) and metals (method SW-846-7471A/6010/6020). The depths of the soil samples were determined in the field. The soil samples were transported in a sealed cooler to Ohio EPA's field facility and stored in a locked room. The samples were relinquished to Kemron Environmental Services (Kemron) on December 14, 2007 for analytical analysis.

Each boring was converted to a temporary monitoring well, using 0.5 inch ID pre-packed wells with three foot screens. All well screens were placed at approximately 28-31 feet below the ground surface (BGS) in the sand and gravel aquifer. Wells were completed using a sand pack and granular bentonite seal. After the wells were constructed, approximately two gallons of water were pumped out of each using a peristaltic pump. The wells were sealed with tape pending ground water sampling in approximately one week.

On December 19, 2007, Ohio EPA collected the ground water samples for VOCs (method SW-846-8260B) and metals (method SW-846-6010/7470A). Prior to sampling, the wells were inspected and water levels were measured. A peristaltic pump with dedicated LDPE tubing was used to purge and sample each well. Approximately three gallons of water were extracted from each well prior to sampling. During purging, ground water field parameters were measured at 3-4 minute intervals. Field parameters (temperature, conductivity, pH, oxygen reduction potential) were measured using an Ultrameter. Turbidity was measured with a DRT 15CE Turbidimeter. After purging was completed, ground water samples were collected and placed on ice in a cooler.

After all of the ground water samples were collected, water levels were re-measured and the wells

were sealed. The well locations were documented using a Trimble Geo XM, and the relative top-of-casing elevations were measured with laser leveling equipment. Production Wells PW-1 and PW-2 water levels were also measured and their locations documented. Before leaving the property, all monitoring wells were covered with cement blocks to highlight well locations and prevent damage.

Ground water samples were transported in sealed coolers to Ohio EPA's Central District Office and locked in a room. On December 20, 2007, Ohio EPA transferred the samples to Ohio EPA's field facility for Kemron pickup. The samples were relinquished to Kemron on December 21, 2007.

On January 24, 2008, Ohio EPA removed and sealed the temporary monitoring wells in accordance with the work plan.

Investigation Results

The subsurface lithology is depicted in **Figures 2 and 3**. In general, the upper 23 feet consists of unconsolidated dry-moist clayey-silt with thin very fine sand lenses. A fine-medium sand occurs at 23 feet BGS that grades to a sand and gravel.

The saturated zone begins at the fine-medium sand at approximately 23 feet BGS. The depth to ground water in the monitoring wells was measured at approximately 18 feet BGS, which indicates it is confined by the upper clayey-silt. Ground water gradient was approximately 0.001 feet/foot with a northerly flow at the time of the investigation (**Figure 4**).

Ohio EPA received the analytical results on January 14, 2008. Chemicals of concern (COCs) were detected in soil samples. The concentrations of all COCs were below applicable standards and leach-based values. Arsenic exceeded applicable standards in Samples B-01 and B-02, however, Ohio EPA determined that the concentrations are within regional soil background values. There were no detections of organic COCs in ground water. Inorganics detected in ground water were naturally occurring arsenic and barium. See **Table 1** for a summary of the soil results.

Table 1:
Soil Sample Results
Custom Cartons Property
Tier II Audit Investigation

Constituent	Leach Value*	Applicable Standard*	Sample Number, Depth and Concentration				
			B-01 (6-8)	B-02 (8-10)	B-03 (14-16)	B-03-R (14-16)	B-04 (8-10)
Organics (ug/kg)							
acetone		4500000	30.3	ND	ND	ND	32.2
2-butanone	1800	NL	3.44J	ND	ND	ND	3.74J
1,1 dichloroethane	NL	620000	68.9	10.7	ND	ND	16.8
1,2 dichloroethane	NL	9600	3.14J	ND	ND	ND	ND
1,1 dichloroethene	240	1500	1.59J	ND	ND	ND	2.13J
cis 1,2 dichloroethene	3	450000	3.4J	ND	ND	ND	0.623J
1,1,1 trichloroethane	1300	1200000	ND	32.3	ND	ND	63
trichloroethene	48	77000	ND	0.999J	ND	ND	ND
methylene chloride	NL	220000	1.29J	1.35J	2.73J	3.51J	2.26J
napthalene	3000	1800000	0.819J	ND	ND	ND	ND
Metals (mg/kg)			(2-4)	(8-10)	(4-6)		(4-6)
arsenic	19	6.9	7.61	12.8	3.7	NA	5.38
mercury	23	16	0.0198J	0.0183J	0.0199J	NA	ND
silver	NL	NL	0.273J	ND	ND	NA	0.369J
barium	110000	5000	65.7	92.8	78.6	NA	113
cadmium	42	32	0.47	1.41	0.341J	NA	0.368J
chromium	110***	230	11.3	11.7	8.23	NA	16.5
lead	NL	400	17	12.9	18.3	NA	14.6
selenium	NL	NL	ND	ND	ND	NA	ND
*VAP Single Chemical Unrestricted Use Standards (1996)							
**Ohio EPA Derived Leach Based Soil Values for Organic Chemicals, Soil Type III							
**Ohio EPA Derived Leach Based Soil Values for Inorganic Chemicals, Less Than 0.5 Acre							
***Assumes Cr+6							
NL: Not Listed							
ND: Not Detected							
NA: Not Analyzed							
J Qualifier: Constituent Detected but Below the Reporting Limit							

Figure 1.
Custom Cartons VAP Property

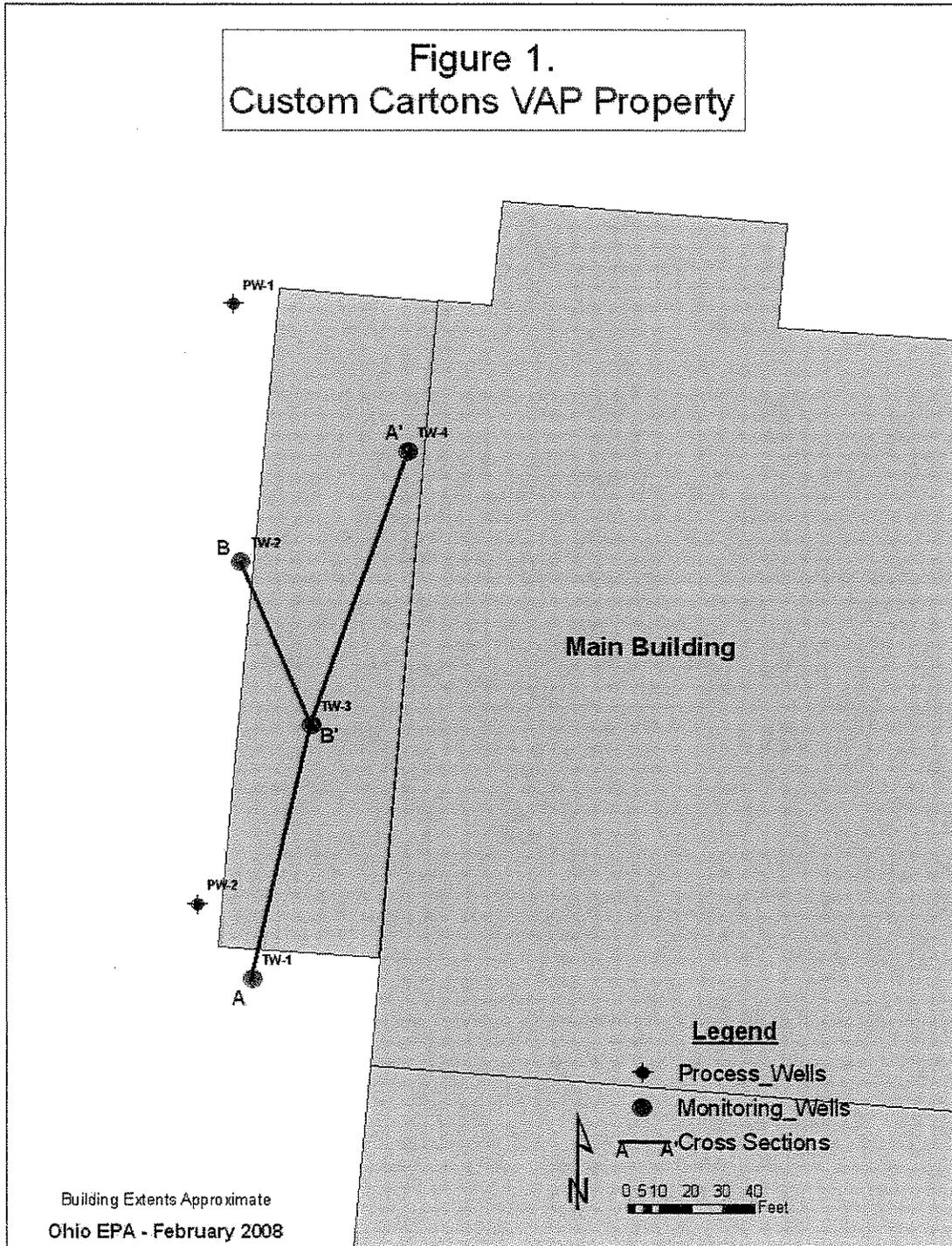
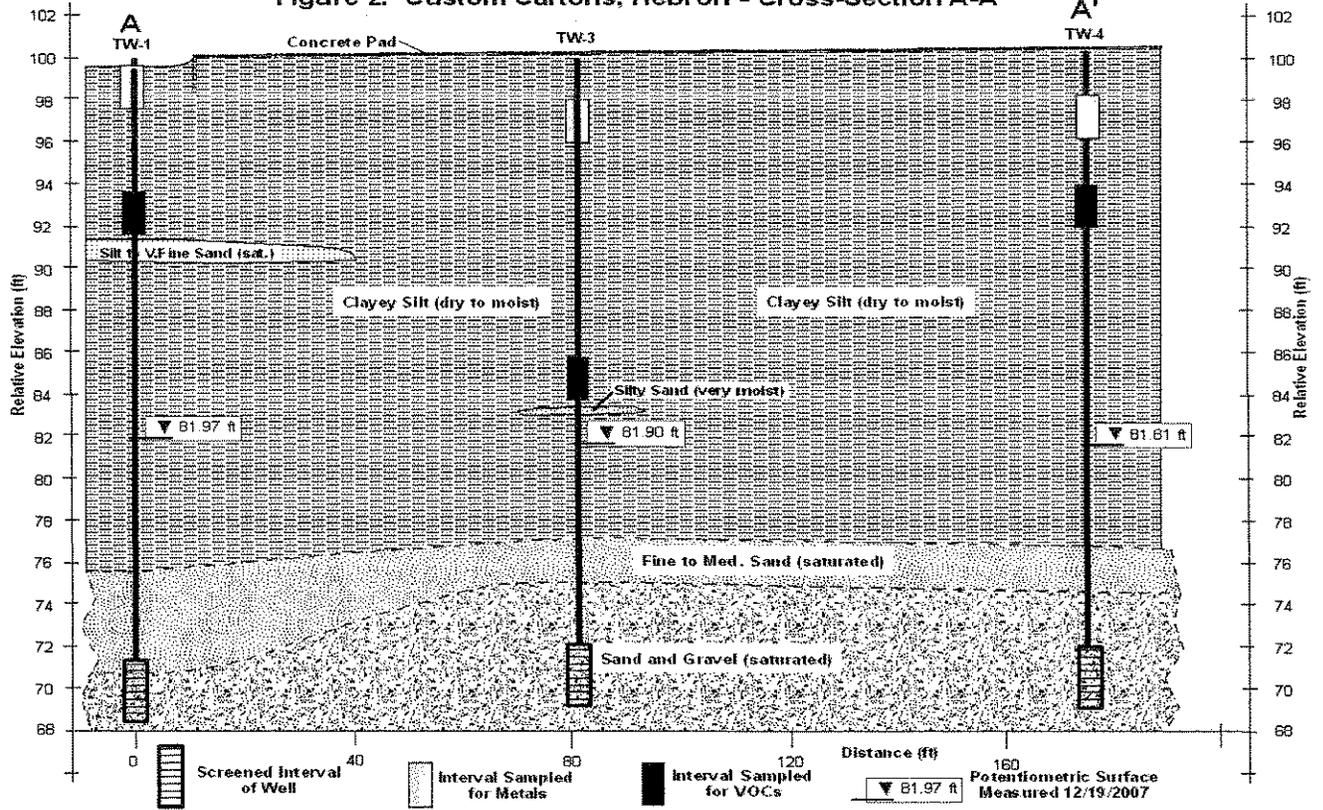


Figure 2. Custom Cartons, Hebron - Cross-Section A-A'



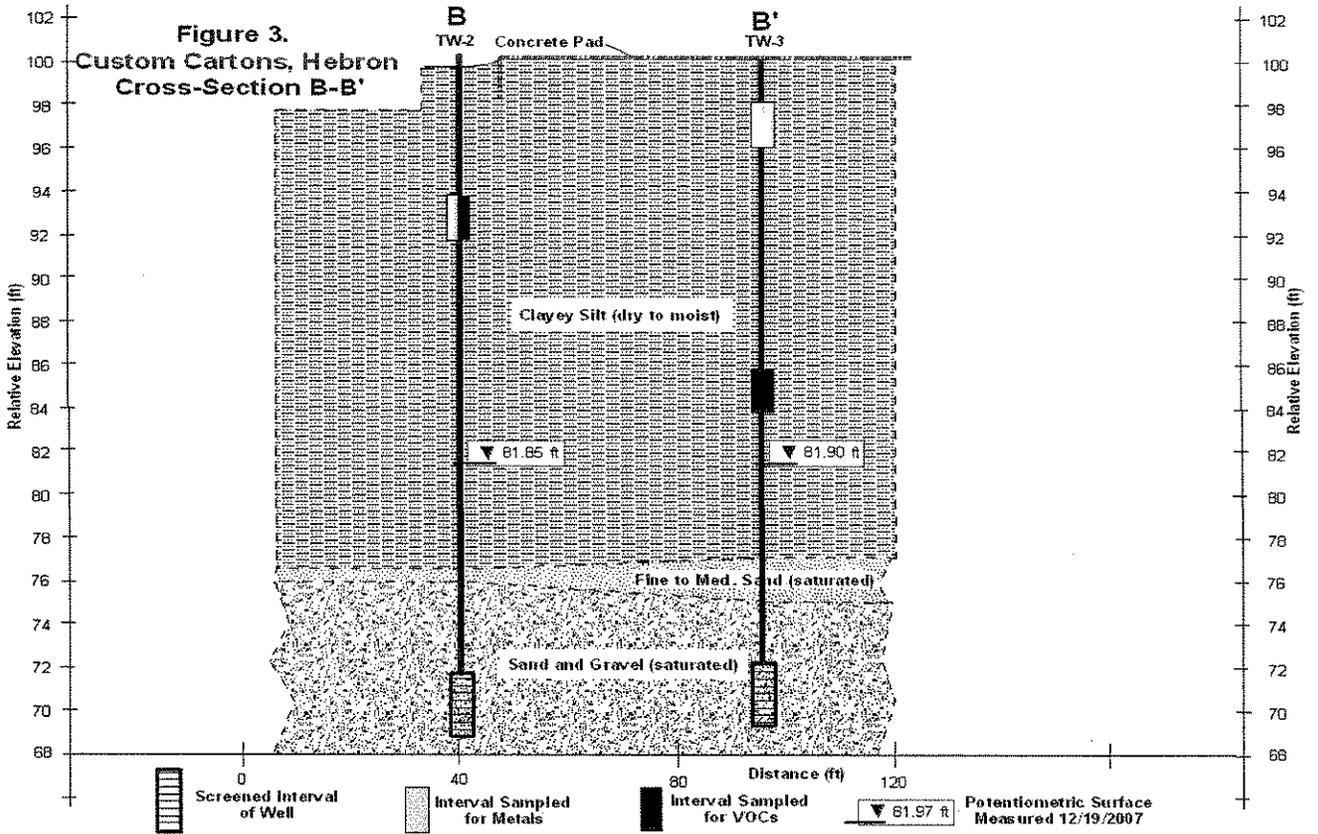


Figure 4.
 Custom Cartons VAP Property
 Potentiometric Surface Map

