



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

JUN 02 2008

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JUN 03 2008

OHIO EPA/CDO

Louis Dellapina, CFO  
Superior Fibers, Inc.  
499 North Broad Street  
Bremen, OH 43107

**Re: Audit of No Further Action Letter 03NFA161: Superior Fibers, Inc. Property  
Project Number 123-2115-003  
Fairfield County**

Dear Mr. Dellapina:

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 Superior Fibers, Inc., property, located at 499 North Broad Street, Bremen, Fairfield County, Ohio. Ohio EPA has issued findings of the audit to you and the certified professional (CP). (See the enclosed Tier I audit findings report.) As you are aware, Dennis A. Smalley of Smalley and Associates, Inc., submitted the NFA letter to the Ohio EPA on February 19, 2003 with a request for a covenant not to sue (CNS) on behalf of Superior Fibers.

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 February 19, 2003 for the Superior Fibers 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.

In accordance with 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

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### Summary of Audit Findings

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

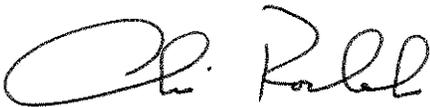
The NFA letter issued by Mr. Smalley was not in compliance with OAC 3745-300-13 and the property does not meet VAP applicable standards. The ground water protection demonstration, compliance with applicable standards, and ground water response requirements at the time the NFA letter was issued could not be verified. The property currently exceeds VAP applicable standards for the critical resource ground water in the upper sand and gravel zone due to detections of volatile organic compounds above unrestricted potable use standards migrating from the property boundary.

The request for a CNS was approved on March 22, 2005. Based upon the information reviewed during the Tier I audit, Ohio EPA concluded the property does not meet the applicable standards established in the VAP rules. Ohio EPA decided not to conduct a Tier II audit, which would involve physical investigation of the property.

Superior Fibers has replaced Mr. Smalley as CP, and is continuing to work with Ohio EPA to address the volatile organic compound ground water plume migrating from the property. A notice of failure to demonstrate continued compliance with VAP applicable standards was issued to Superior Fibers. Pursuant to a compliance schedule agreement signed by Superior Fibers and the Director of Ohio EPA, Superior Fibers has committed to submitting an addendum to the 2005 operation and maintenance (O&M) plan that provides the details regarding the steps to be taken by Superior Fibers to bring the property back into compliance with the VAP applicable standards. Superior Fibers has proposed additional remedial activity at the property, which has been initiated and is being described in an addendum to the 2005 O&M plan. Julianne Schucker, CH2MHill, CP# 258 has replaced Mr. Smalley as the CP for the property.

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 Diana Bynum at (614) -728-3826.

Sincerely,



Chris Korleski  
Director

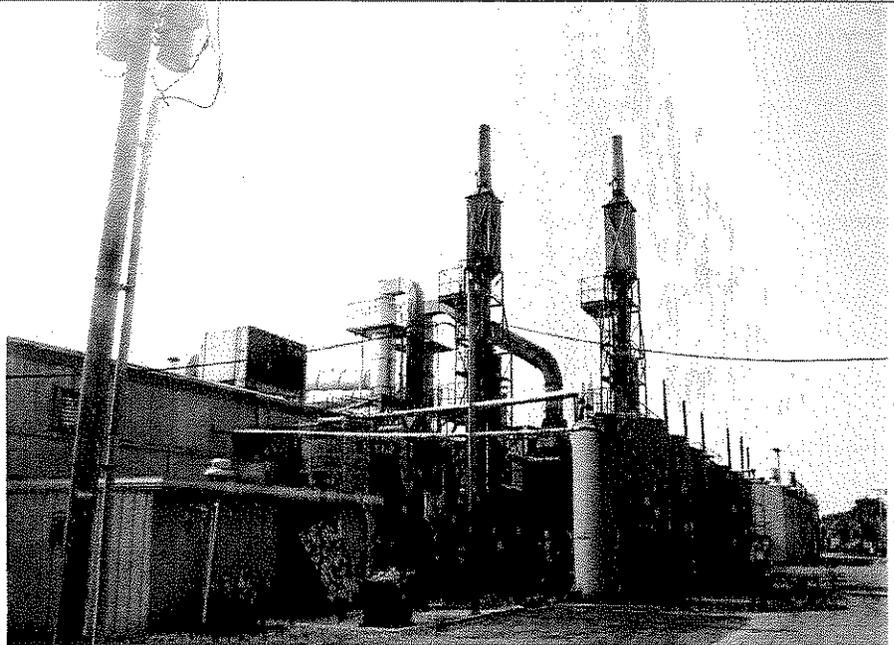
Enclosure: Audit Findings Report

c: Dennis Smalley, Smalley and Associates, CP# 197, w/o attachment  
Donald Richner, EA Group, CL# 15, w/o attachment  
Diana L. Bynum, DERR/CDO  
Deborah Stayton, DERR/CDO  
Amy Yersavich, Manager, VAP  
Martin Smith, DERR/CO/VAP  
Files DERR/CO and DERR/CDO 03NFA161

**Division of Emergency and Remedial Response**

**Superior Fibers Inc. Property  
Voluntary Action Program  
No Further Action Letter Audit**

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**April 2008**

Ted Strickland, Governor  
Chris Korleski, Director

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

Superior Fibers, Inc., Bremen, Ohio  
No Further Action Letter No. 03NFA161  
TIER I AUDIT REPORT FINDINGS  
April 2008

**Name and Address of Property:** Superior Fibers, Inc.  
499 North Broad Street  
Bremen, Ohio 43107

**Name and Address of Volunteer:** Superior Fibers, Inc.  
499 North Broad Street  
Bremen, Ohio 43107

**Certified Professional:** Dennis Smalley, CP#197

**Certified Laboratory:** Blackhand Laboratory, Lancaster CL# 64  
EA Group, Mentor CL# 15

**Date NFA Letter Submitted:** February 19, 2003

**County and Ohio EPA District:** Fairfield, Central District Office

**INTRODUCTION**

Ohio Administrative Code (OAC) 3745-300-14(G) directs the 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 February 19, 2003 for the Superior Fibers, 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.

A Tier I audit was conducted on the Superior Fibers NFA letter. Prior to beginning the Tier I audit, Ohio EPA sent audit notification letters to the following individuals:

- Louis Dellapina, Superior Fibers, Inc., on February 28, 2007
- Dennis A. Smalley on March 1 and April 23, 2007
- Donald Richner, EA Group, on March 2, 2007

The NFA letter audit for the property consisted of a visual property inspection and a review of file documents that were issued and received by Ohio EPA prior to the granting of the covenant not to sue (CNS), as well as additional documentation provided by Mr. Smalley. The visual property inspection was conducted on May 30, 2007. Ohio EPA audit team members participating in the site inspection were Audrey Lynch, Jason Reed and Diana Bynum. Louis Dellapina and Richard Clark of Superior Fibers escorted the team members during the inspection. After the site inspection, a report regarding the site inspection was written and can be found in the Division of Emergency and Remedial Response, Central District Office files.

Documents reviewed for the audit and the dates received are listed below:

1. NFA letter, received on February 19, 2003
2. Phase I Property Assessment Report, received on February 19, 2003
3. Phase II Property Assessment Report, received on February 19, 2003
4. Addenda to NFA letter: July 2004 addendum, received on July 14, 2004 and February 2005 addendum, received on February 28, 2005
5. Operation & Maintenance Plan: draft plan was received on August 31, 2004 and final O&M Plan was received in February 2005
6. Correspondence files up to the issuance of the CNS on March 22, 2005

A request for documentation to determine compliance with the applicable standards defined in Ohio Revised Code (ORC) Chapter 3746 and OAC Chapter 3745-300 and as directed in the Director's Final Findings and Orders (DFFOs) issued on December 22,

2006 was sent to Mr. Smalley via registered mail. Thirty days elapsed with no supporting documentation being received so a second request was sent via registered mail. The second request was returned to Ohio EPA unclaimed. Subsequently, on May 25, 2007, Marty Cooper, Ohio EPA Legal, e-mailed a copy of the second letter to Mr. Smalley and to his attorney. On May 29, 2007, Ohio EPA was notified that the requested supporting documentation would be mailed on May 30, 2007. The supporting documentation was received on May 31, 2007.

The supporting documentation was sorted according to whether the documents pertained to the audit or did not pertain to the audit. Most of the documents pertaining to the audit were copies of reports that Ohio EPA already had in its files. While there was some new information, most of the supporting information needed by Ohio EPA to do a thorough audit was missing.

### **PROPERTY BACKGROUND**

The owner of the property in 1924 was Zebulon Stuart et al. who transferred it to Ray and Eva Johnston on April 18, 1924 for a dwelling and garden chicken house. It remained as undeveloped agricultural land until 1952 when Nicolette Industries developed the current property. They did not own the property. In 1957, Ray Johnston sold the property to Modiglass Fibers, a fiberglass manufacturer. Reichhold Chemicals, Inc. bought the property from Modiglass Fibers in 1964. Superior Fibers acquired the property from Reichhold Chemicals in 1984 and is the current owner. The site appears to have been used continuously for fiberglass manufacturing since 1952. Superior Fibers continues to use the property for fiberglass manufacturing.

Superior Fibers occupies approximately 32 acres and is located approximately 1280 feet upgradient of the village of Bremen's wellfield. The land use surrounding the property is agricultural to the north, east, and west, and residential to the south.

### **NFA Letter Overview**

Prior to the submission of the NFA letter, no known investigations were conducted at the property. No past history has been given for non-agricultural users other than the fact that Nicolette Industries built the original buildings and Modiglass Fibers and Reichhold Chemicals were fiberglass manufacturers. No previous environmental history was provided, including spills and/or disposal of any chemicals used on site. No details were given of the onsite manufacturing processes. The Phase I and Phase II property assessments concentrated on the current owner as they were doing business as of 2003.

The NFA letter was submitted by Mr. Smalley on February 19, 2003. VAP Phase I and Phase II property assessments were conducted at the property. The Phase I Property Assessment Report (Phase I report) was completed on November 14, 2002. The

Phase II Property Assessment Report (Phase II report) was completed on December 16, 2002. There were no eligibility issues that Mr. Smalley had to overcome, but there were many deficiencies in the original NFA letter submittal. The deficiencies were detailed in a comment letter and two addenda were submitted to respond to the deficiencies and to complete the NFA letter. The final addendum including the revised operation and maintenance (O&M) plan was submitted on February 28, 2005.

### **Phase I Property Assessment**

The Phase I property assessment identified five areas that needed to be addressed (see Figure 1).

1. The West Side of Plant #1 – This area is found on the west side of Plant #1 in the area where the cyclonic scrubbers are located. The scrubbers remove air particulates. Chemicals of concern (COCs) identified were volatile organic compounds (VOCs) and semi-volatile organic compounds (SVOCs).
2. Settling Tanks and Lagoon Area – The settling tanks and resin water separators were used for waste water treatment. As a result, ground water and soil may have been contaminated. COCs identified in this area were VOCs and SVOCs.
3. Outside Southside of Plant #1 Building – Trichloroethene (TCE) was used at the back of Plant #1 and was possibly spilled on the ground during operations. COCs identified in this area were VOCs and SVOCs.
4. Plant #2 Storage and Loading – The loading and storage areas may have been impacted by historical operations. COCs identified in this area were VOCs and SVOCs.
5. NFA Letter Property-wide Ground Water – The ground water at the site may have been impacted by VOCs and SVOCs.

Based on the findings of the Phase I report, a Phase II property assessment was required.

### **Phase II Property Assessment**

The Phase II property assessment was conducted from June – December 2002 and included soil and ground water sampling, a pathway completeness determination and a determination of applicable standards. An assessment of the risks from direct contact to the soils at the property, construction worker exposure to the soils at the property, soil to indoor air, and ground water to indoor air were also conducted. Additional ground water sampling occurred from March – May 2004.

Twelve COCs were detected in soil samples and were mostly chlorinated solvents and BTEX (benzene, toluene, ethylbenzene and xylene).

A sand and gravel aquifer lies beneath the property. Silty sandy clay forms the unsaturated zone. Thirty-two monitoring wells were installed and sampled. Along with the monitoring wells, Superior Fibers had three process water wells. Sampling of the monitoring and process wells determined that trichloroethene, 1,1-dichloroethane, cis-1,2-dichloroethene, trans-1,2-dichloroethene and vinyl chloride were COCs .

Additional monitoring wells were installed after issuance of the CNS in accordance with the O&M plan to act as early warning wells. The village of Bremen wellfield is located south of the property. The closest village well is located 1280 feet south of the southern property line and is screened at 37 feet in a sand and gravel aquifer. The uppermost aquifer is classified as a Critical Resource per OAC 3745-300-10.

Monitoring well sampling results indicated that ground water onsite exceeded the unrestricted potable use standards (UPUS) for the identified COCs. However, existing sampling results and other information supplied in the NFA letter did not indicate that ground water exceeded UPUS at the property boundary. Ongoing ground water monitoring was required to provide additional data sets and verify compliance with applicable standards as required by the O&M plan.

A small stream runs west to east along the north boundary of the property. Surface water and sediment sampling was conducted but no criteria were exceeded.

Restrictions have been placed on the property. The land is restricted to commercial and industrial use. The use of ground water is restricted to non-contact processes associated with manufacturing operations at the property but only from the current process wells. Ground water may also be extracted as part of the remediation process or during construction/maintenance of utilities should dewatering be necessary.

Technical assistance was not requested by Mr. Smalley or the volunteer. A technical assistance account was established after issuance of the CNS as part of the operation and maintenance agreement.

### **AUDIT CRITERIA**

The Director of Ohio EPA issued a CNS to Superior Fibers on March 22, 2005. After the CNS was issued, evidence became available that the data submitted as part of the Superior Fibers NFA letter was inaccurate and unrepresentative, and may have been fraudulently submitted. This led to the investigation and the revocation of Mr. Smalley's CP certification on December 22, 2006.

The criteria for auditing the technical adequacy and completeness of the NFA letter are found in ORC Chapter 3746 and OAC Chapter 3745-300-14. The evaluation of whether the property meets VAP applicable standards included, but was not limited to, a determination of the performance of all NFA letter activities in relation to OAC Chapter 3745-300, and the CP's compliance with the requirements set forth in OAC 3745-300-05.

The Phase I and Phase II property assessments conducted under the VAP are required to be performed following the standards set forth in OAC 3745-300-06 and OAC 3745-300-07, respectively. The indoor air pathway was the only risk assessment scenario identified. The assessment followed the requirements of OAC 3745-300-09. A ground water evaluation followed the criteria set forth in OAC 3745-300-10.

As set forth in OAC 3745-300-14(H)(2), a Tier II audit can be conducted if (1) the documents produced and reviewed in a Tier I audit are inadequate to substantiate the NFA letter or (2) the Director of Ohio EPA has a reasonable belief that the NFA letter has been based on fraudulent or inaccurate information or documentation. However, due to the revocation of Mr. Smalley's CP certification and availability of data obtained by a new CP hired by the volunteer after submittal of the NFA letter, a Tier II audit was not considered necessary at this time. If additional information is brought forth regarding the protectiveness of this property, or other properties for which Mr. Smalley has issued NFA Letters, Ohio EPA may, upon receiving such information, recommend a Tier II audit of this property.

OAC 3745-300-14(O) requires the Director of Ohio EPA to issue NFA audit findings, which 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.

### **AUDIT FINDINGS**

Subsequent to the issuance of the CNS, issues regarding ground water sampling results and reporting requirements under the O&M plan began to mount. During the February 2006 quarterly sampling event, Ohio EPA split ground water samples with Mr. Smalley. The results reported from that sampling event were significantly different from all prior sampling events, and indicated that the ground water plume located under the property was at least 90% larger in volume than previously reported. Confirmatory sampling was conducted in March 2006 and the contingent remedy was triggered pursuant to the O&M plan.

The findings from the February 2006 and March 2006 ground water sampling events at the property led to an internal investigation of Mr. Smalley regarding his past conduct and work as a VAP CP. At the conclusion of the investigation, which involved many issues associated with the Superior Fibers NFA letter and property, Ohio EPA initiated a

CP certification revocation action against Mr. Smalley. The Director of Ohio EPA issued consensual DFFOs on December 22, 2006 (see Attachment 1) causing the revocation of Mr. Smalley's VAP CP certification for four years, with additional conditions before reinstatement. The revocation, in turn, triggered a mandatory audit of all of Mr. Smalley's submitted NFA letters, including Superior Fibers.

The findings of this Tier I audit are divided into three general categories 1) compliance with VAP applicable standards, 2) the performance of the CP, and 3) the performance of the CL.

### **Assessment of Property's Compliance with Applicable Standards**

The property demonstrated compliance with VAP applicable standards through various means including VAP generic numeric standards under OAC3745-300-08, and property-specific risk standards under OAC 3745-300-09. The NFA letter demonstrated compliance with VAP applicable standards using a property-specific human health risk demonstration for the indoor air pathway scenario. This met the requirements of OAC 3745-300-09.

The NFA letter demonstrated that the property met VAP applicable standards for direct contact to contaminated soil and ground water through the establishment of institutional controls that were recorded on December 3, 2004 in the Fairfield County Recorder's Office. The property is restricted to commercial and industrial uses only and prohibits the extraction of ground water located at or underlying the property for any purpose, potable or otherwise, except for the existing non-contact process water used in the manufacturing at the property. The construction of buildings with basements is also restricted. These restrictions help demonstrate that the property meets VAP applicable standards.

In order to demonstrate on-going compliance with VAP applicable standards at the property, an O&M agreement and plan were developed to provide for long term monitoring of ground water as well as a contingency plan for remediation. Subsequently, the approved 2005 O&M plan was revised to modify the contingent remedy.

### **Specific Issues with Ground Water**

1. The demonstration of the lower ground water zones meeting the provisions of UPUS in accordance with OAC 3745-300-07(D)(3) at the time of the NFA letter issuance can not be verified due to discrepancies in the reported construction depths of wells relied upon and the COC sampling results reported for the demonstration.

The demonstration to the underlying sandstone bedrock ground water zone (approximately 50-60 feet deep) was based upon the lack of deep detections (below 30 feet) of COCs above UPUS in wells constructed within the sand and gravel zone. Subsequent Ohio EPA investigations at the property showed that several of the "deep" wells, which were sampled, were up to 23 feet shallower than depicted in well logs (as seen at Monitoring Well MW-7D). Samples collected under the direct observation of Ohio EPA in February 2006 from Monitoring Well MW-7D and other wells showed detections of multiple COCs above UPUS, which had previously been reported by the CP as non-detect. Therefore, the lack of detections of COCs below 30 feet, as presented in the NFA letter Addendum #1, can not be verified.

In October 2006, Monitoring Well MW-32 was constructed immediately downgradient of the source area at the interface between the sand and gravel zone and the underlying sandstone bedrock near Monitoring Well MW-11 (see Figure 2). Since Monitoring Well MW-32 was constructed, concentrations of cis-1,2-DCE have been detected up to 3 ug/L, significantly below the UPUS of 70 ug/L. Therefore, Ohio EPA now believes that the provisions for protection of ground water apply to the underlying sandstone bedrock.

2. The demonstration of continuing protection of ground water meeting UPUS in accordance with OAC 3745-300-07(D)(4) based upon an apparent upward vertical gradient within the sand and gravel zone at the time of the NFA letter issuance can not be verified.

The upward vertical gradient relied upon by Mr. Smalley can not be verified due to his reliance upon an inaccurate survey conducted by his consulting firm, Smalley & Associates, Inc. Mr. Smalley reported to Ohio EPA that there was a "zeroing problem" while surveying the well locations, which resulted in inaccurate top-of-casing elevations and lateral location of wells.

Subsequent surveying, investigation of construction of the ground water monitoring well network, and ground water sampling and analysis by the volunteer and new consultant have shown that COCs in ground water at the interface of the sand and gravel zone with the underlying sandstone bedrock does not exceed UPUS. A basal clay unit provides separation of the sand and gravel zone from the sandstone bedrock immediately downgradient of the contaminant source area, which should minimize vertical contaminant migration. Also, chlorinated solvents have not been used at the property since approximately 1987. Therefore, it appears that the sandstone bedrock ground water zone is currently protected and should remain protected from COCs above UPUS.

3. Since the original NFA letter issuance, compliance with applicable standards at the points of compliance in accordance with OAC 3745-300-07(G)(1)(b) and the ground water response requirements of OAC 3745-300-10(F)(2) could not be verified due to inaccurate and unrepresentative ground water analytical results submitted by Mr. Smalley.

Subsequent ground water investigation on-property and off-property during the O&M monitoring period revealed that the ground water contaminant plume extends significantly beyond the property boundary and, may have, since before the NFA letter was issued. The December 22, 2006 consensual DFFOs revoking Mr. Smalley's CP certification offers specific details on the inaccurate and unrepresentative ground water data submitted by him (see Attachment 1).

### **Certified Professional's Performance**

As part of the NFA audit a 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 any subsequent addenda.
2. The Director of Ohio EPA has since revoked Mr. Smalley's CP certification.
3. In order to issue an NFA letter, it is the obligation of a CP, as described in ORC 3746.11(A) and ORC 3745-300-13(A), to verify that a property complies with VAP applicable standards. With respect to the NFA letter for the property, Mr. Smalley's performance resulted in the issuance of an NFA letter that was not consistent with VAP applicable standards contained in ORC Chapter 3746 and OAC Chapter 3745-300.

The original NFA letter review revealed various deficiencies that were corrected with the issuance of two addenda (see Attachment 1 beginning on page 3).

Following the issuance of the CNS, during the Feb. 2006 sampling event under the O&M plan, it was determined that accurate data and sampling information had not been submitted with the NFA letter. An investigation and subsequent disciplinary action was taken against Mr. Smalley resulting in the revocation of his CP certification. A notice of failure to demonstrate continued compliance with VAP applicable standards was issued to Superior Fibers. A Compliance Schedule Agreement was signed by the volunteer and the Director of Ohio EPA, which commits the volunteer to submitting an addendum to the 2005 O&M plan that provides the details regarding the steps to be taken by the volunteer to bring the property back into compliance with the VAP applicable standards.

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 3745-300-05(F)(1). 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. Mr. Smalley did not meet the standards of conduct provided in OAC 3745-300-05(F). Subsequent to the issuance of the CNS, Ohio EPA conducted split-sampling of ground water samples with Smalley & Associates in February 2006. The results of the split-sampling and subsequent internal Ohio EPA investigation of Mr. Smalley showed numerous discrepancies with data submitted in the original NFA letter.

### **Certified Laboratory Performance**

A detailed review of the CLs (Blackhand Laboratory and EA Group) performance was not conducted. The correct analyses were conducted but little quality assurance/quality control information was provided. No supporting information was supplied by Mr. Smalley in regards to the CLs. Blackhand Laboratory was owned and operated by Mr. Smalley, and it no longer exists. EA Group was not asked to submit additional information.

### **CONCLUSIONS AND RECOMMENDATIONS**

The NFA letter audit demonstrates that the NFA letter as amended was not issued in accordance with all of the requirements set forth in ORC 3746 and OAC 3745-300.

#### **1. Compliance with Applicable Standards**

The NFA letter audit demonstrates that the NFA letter was not issued by Mr. Smalley in compliance with OAC 3745-300-13 and the property did not meet VAP applicable standards. The ground water protection demonstration, compliance with applicable standards, and ground water response requirements at the time the NFA letter was issued can not be verified. However, the demonstration of protection to the lower ground water zone in accordance with OAC 3745-300-07(D)(4) can be made with alternative data collected subsequent to the issuance of the CNS.

The property currently exceeds VAP applicable standards for the critical resource ground water in the upper sand and gravel zone due to detections of VOCs above UPUS emanating from the property boundary. As discussed in the audit findings, there is insufficient information to demonstrate whether the property is currently protective of public health and safety and the environment.

The volunteer has replaced Mr. Smalley as CP, and is continuing to work with Ohio EPA to address the chlorinated solvents ground water plume migrating from

the property. A notice of failure to demonstrate continued compliance with VAP applicable standards was issued to the volunteer. Pursuant to a Compliance Schedule Agreement signed by the volunteer and the Director of Ohio EPA, the volunteer has committed to submitting an addendum to the 2005 O&M plan that provides the details regarding the steps to be taken by the volunteer to bring the property back into compliance with the VAP applicable standards. The volunteer has proposed additional remedial activity at the property, which has been initiated and is being described in an addendum to the 2005 O&M plan. Julianne Schucker, CH2MHill, CP# 258 has replaced Mr. Smalley as the CP for the property.

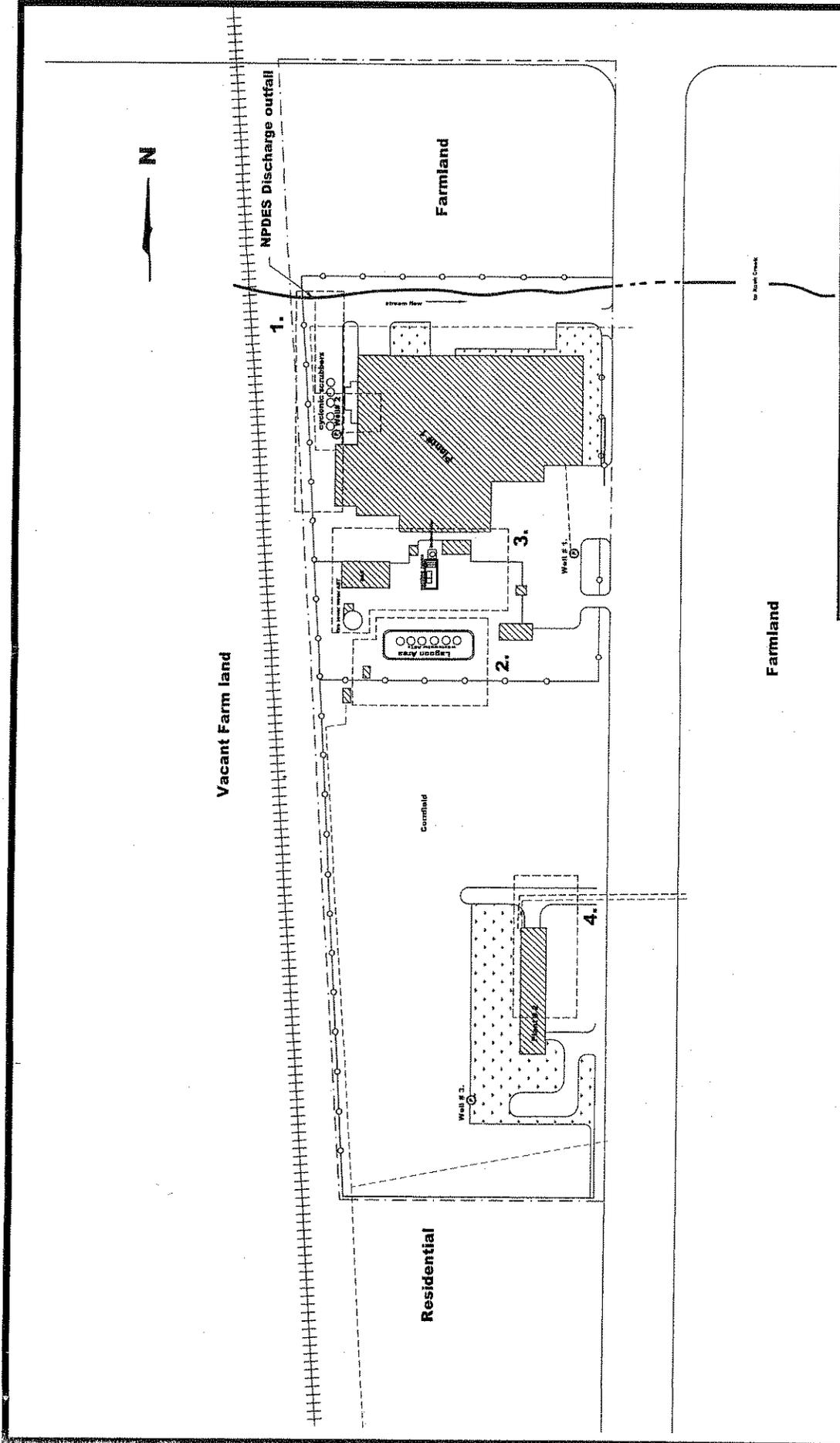
## **2. Certified Professional**

Through the NFA letter audit, the audit team confirmed that Mr. Smalley's performance resulted in the issuance of an NFA letter that is not consistent with the VAP applicable standards contained in ORC Chapter 3746 and OAC Chapter 3745-300.

As a result of deficiencies discovered after issuance of the NFA letter and CNS, Mr. Smalley 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**

Although insufficient data was presented to determine if there were any deficiencies in the laboratory data, no recommendation is being made at this time regarding the CLs' performance. Data verification was not performed because supporting information was not received from Mr. Smalley. Blackhand Laboratory was owned and operated by Mr. Smalley. Because it no longer exists, an audit result letter will not be sent to Blackhand Laboratory.



**FIGURE 1. IDENTIFIED AREA MAP** DATE: 10/09/02

- water line
- natural gas line
- communication line
- (P) Production Well
- Identified area

Superior Fibers  
 499 N. Broad St.  
 Bremen, Ohio 43107

DRAWING BY: SMALLEY & ASSOCIATES  
 5705 LITHOPOLIS ROAD, NW  
 LANCASTER, OHIO 43130  
 (740) 654-0712

\* Site wide groundwater is the 5th Identified Area.



DEC 22 2006

ENTERED DIRECTOR'S JOURNAL

BEFORE THE  
OHIO ENVIRONMENTAL PROTECTION AGENCY

In the matter of:	:	<u>Revocation of Certification of</u>
	:	<u>VAP Certified Professional</u>
	:	
Dennis A. Smalley	:	<u>Director's Final Findings</u>
Certified Professional No. CP197	:	<u>and Orders</u>
	:	

PREAMBLE

The parties hereto agree to the following, except as otherwise stated in the Findings of these Orders:

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to Dennis A. Smalley pursuant to the authority vested in the Director of the Ohio Environmental Protection Agency ("Ohio EPA") under Ohio Revised Code ("ORC") Chapter 3746 and Ohio Administrative Code ("OAC") Chapter 3745-300.

II. FINDINGS

All of the findings necessary for the issuance of these Orders pursuant to ORC Chapter 3746 and OAC Chapter 3745-300 have been made and are outlined below. By entering into these Orders, Dennis A. Smalley neither admits nor denies any matter of law or fact herein. The Director of Ohio EPA has determined the following findings:

Certification background

1. Dennis A. Smalley is a Certified Professional, CP No. 197 ("Mr. Smalley"), as defined in ORC 3746.01(E) and OAC 3745-300-01(A)(8), for the Voluntary Action Program ("VAP") administered by the Ohio Environmental Protection Agency ("Ohio EPA") Division of Emergency and Remedial Response.
2. The Director issued a certified professional ("CP") certification to Mr. Smalley initially on July 10, 1998, and has since approved his applications for renewal pursuant to OAC 3745-300-05.

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.

By:  Date: 12-22-06

3. On July 13, 2006, Mr. Smalley timely submitted his application for renewal of his CP certification expiring on August 21, 2006. The renewal application was automatically renewed pursuant to OAC 3745-300-05(D)(3). By letter dated September 12, 2006, the VAP manager informed Mr. Smalley of the automatic renewal and of a pending investigation of his CP performance. The renewal certificate itself, however, incorrectly cites to a certification period of July 6, 2006 to July 6, 2007.
4. Based on the automatic renewal, Mr. Smalley's CP certification expires on August 21, 2007 unless the certification is renewed, suspended, or revoked prior to its expiration pursuant to OAC 3745-300-05(D)(5).

Background on NFA Letter for Superior Fibers property

5. On February 19, 2003, Ohio EPA received a No Further Action letter ("NFA Letter") (No. 03NFA161), which Mr. Smalley submitted on behalf of Superior Fibers, Inc. ("Volunteer") for its property at 499 North Broad Street, Bremen, Fairfield County, Ohio ("Property"). Mr. Smalley was certified at the time of his issuance of the NFA Letter as noted in his CP affidavit dated January 23, 2003 for the NFA Letter.
6. The approximately 32-acre Property is located approximately 1280 feet north (up gradient) of the wellfield used by the Village of Bremen for its public water system (herein "Bremen wellfield"). The Bremen wellfield draws water from the buried valley aquifer that also underlies the Property.
7. Based on the NFA Letter, releases of chlorinated solvents have occurred at the Property to both soil and ground water.
8. The chemicals of concern ("COCs") in ground water underlying the Property include trichloroethene ("TCE") and its associated breakdown products of 1,1-dichloroethane ("DCA"), *cis*-1,2-dichloroethene ("DCE"), *trans*-1,2-DCE, and vinyl chloride (collectively referred to herein as the "chlorinated solvent plume").
9. At the time of the NFA Letter issuance, the chlorinated solvent plume at the Property fell within the 1-year time of travel distance of ground water from the Bremen wellfield. More recent well field information shows the Property is located just outside of the 1-year time of travel calculation. In either case, the Property lies within the 5-year time of travel distance to the Bremen wellfield, which by definition is a drinking water source protection area for a public water system using ground water. Given the proximity of the Property to the Bremen wellfield, the ground water zone receives the designation of a "critical resource ground water" under OAC 3745-300-10(C)(1).

10. Ohio EPA's review of the NFA Letter as originally issued revealed various deficiencies in the NFA Letter's accuracy and content. Ohio EPA communicated the identified deficiencies to Mr. Smalley verbally or in writing to allow for completion of the NFA Letter. The completed NFA Letter would allow for the Director's issuance of a covenant not to sue under ORC Chapter 3746 and OAC Chapter 3745-300 for the Property.
11. Mr. Smalley issued and submitted two addenda to the NFA Letter that corrected the identified deficiencies of the NFA Letter issued originally. He issued the addenda to the NFA Letter by his CP affidavit dated July 13, 2004 and February 28, 2005 (the "addenda").
12. Following Mr. Smalley's submission of the addenda, on March 22, 2005, the Director of Ohio EPA issued a covenant not to sue ("Covenant") based on the NFA Letter as revised by the addenda.
13. The NFA Letter, as revised, provides for quarterly ground water monitoring and a contingency plan for remediation of the chlorinated solvent plume, through use of an operation and maintenance plan ("O&M Plan"). The remedial activities set forth in the O&M Plan are necessary pursuant to OAC 3745-300-10(F)(2) to ensure the chlorinated solvent plume does not emanate off the Property above an applicable standard for ground water.
14. The Covenant is subject to the Volunteer's implementation of the O&M Plan under an O&M Agreement with the Director of Ohio EPA (Attachment 5 to the Covenant).
15. Until dismissed from the project by the Volunteer in July of 2006, Mr. Smalley assumed responsibility for, conducted or oversaw implementation of the O&M Plan for the Volunteer.

Original NFA Letter's deficiencies

16. ORC 3746.11(A) states that an NFA letter shall contain all of the information specified in rules adopted under ORC 3746.04(B)(7). OAC 3745-300-13(E) sets forth a list of the information that a CP must include in an NFA letter.
17. In the NFA Letter issued and submitted in 2003 (herein "original NFA Letter"), Mr. Smalley failed to include:
  - a. A Phase II Property Assessment report completed in accordance with OAC 3745-300-07, as required by OAC 3745-300-13(E)(4). The Phase II Property Assessment report dated December 16, 2002 ("Phase II") was not completed in accordance with OAC 3745-300-07. The original NFA Letter relied on an

- applicable standards determination based on data insufficient to assess the complete exposure pathway for ground water emanating from the Property toward the Bremen wellfield. Further, the Property conditions and extent of the chlorinated solvent plume required further ground water monitoring data to determine temporal variations in the plume. (See Findings 18.a., b., e., h., and i. herein).
- b. Identification of the ground water classification for the property and basis for the classification in accordance with OAC 3745-300-10, as required by OAC 3745-300-13(E)(5). The Phase II report assumed the buried valley aquifer as a "critical resource" classification, however, the original NFA Letter Executive Summary incorrectly changed the assumption to a "Class A" ground water. In fact, the "critical resource" criteria of OAC 3745-300-10(C)(1)(a) and (b) apply. (See Findings 18.c. and f. herein).
  - c. Identification of all contaminants addressed or identified at the property, their source, if known, and their locations and concentration levels prior to and after any remediation, as required by OAC 3745-300-13(E)(10). The original NFA Letter failed to provide sufficient site characterization information and therefore provided limited evaluation of the ground water pathway and point of compliance. (See Findings 18.b., d., g. and i. herein).
  - d. A copy of an operation and maintenance plan completed in accordance with OAC 3745-300-15, as required by OAC 3745-300-13(E)(15). The original NFA Letter contained no O&M plan, which was required to demonstrate compliance with applicable standards pursuant to OAC 3745-300-15(A). (See Finding 18.k. herein).
18. Specifically, Ohio EPA's review of the original NFA Letter revealed the following deficiencies:
- a. The Phase II Property Assessment failed to assess with sufficient representative data the extent of the chlorinated solvent plume in accordance with OAC 3745-300-07(D)(1)(e)-(f). The NFA Letter's Phase II report, Table 2 in Section 8 cites *cis*-1,2-DCE at 4,000  $\mu\text{g/L}$  and vinyl chloride at 580  $\mu\text{g/L}$ , detected at a 25 foot depth in MW-25. However, the well log reveals the well extends to only 25 feet, and the Phase II referenced no deeper well other than MW-7D that was reportedly screened at 45 feet. Between the 25 to 45 feet depth existed an information gap. As a result, the Phase II required collection of additional deep well information to define the vertical extent of the chlorinated solvent plume.
  - b. The Phase II Property Assessment failed to assess the physical Property characteristics in accordance with OAC 3745-300-07(D)(1)(f), and collect

data to assess temporal variations of the COCs in ground water in accordance with OAC 3745-300-07(D)(1)(e)(ii)(b) and (D)(6)(d)(ii). The Phase II provides well sampling data for MW-21 (down gradient, southern Property boundary) that showed *cis*-1,2-DCE contamination at 46  $\mu\text{g/L}$ . Even though the identified contamination was below the 70  $\mu\text{g/L}$  applicable standard, the Phase II report provided no further assessment in accordance with OAC 3745-300-07(D)(1)(e)(ii)(b) and (D)(6)(d)(ii) for COC concentrations in ground water at the southern property boundary.

- c. The Phase II Property Assessment failed to accurately delineate the chlorinated solvent plume from the available data, in accordance with OAC 3745-300-07(D)(2), to demonstrate compliance with the requirements set forth in OAC 3745-300-10(F)(2) for response to contamination in Critical Resource ground water. Well sampling data found in Phase II report Section 8, Table 2, showed *cis*-1,2-DCE contamination at 46  $\mu\text{g/L}$ , however, the report Figure 7 (dated 12/17/02), depicted no plume at the southern property boundary in the area of MW-21.
- d. The Phase II Property Assessment failed to accurately reflect the geologic, hydrogeologic, and physical characteristics of the Property in accordance with OAC 3745-300-07(D)(1) and (I)(4). The Phase II report shows PW-1 on the east side of the Superior Fibers Plant 1 in all figures depicting well locations. In fact, PW-1 is located on the west side of the Property, south of Plant 2. As a result, the Figure 6 cross-section of the PW-1 area is inaccurate.
- e. The Phase II Property Assessment failed to determine in accordance with OAC 3745-300-10(D)(3) whether the provisions for protection of ground water meeting unrestricted potable use standards ("POGWMUPUS") apply to ground water zones underlying the Property and, to demonstrate in accordance with OAC 3745-300-07(D)(4) that the Property will continue to comply with the provisions for POGWMUPUS.
- f. The Phase II Property Assessment failed to classify the buried valley aquifer underlying the Property as a "critical resource ground water" in accordance with OAC 3745-300-07(D)(8) and 3745-300-10(C)(1). Although the Phase II report refers to the ground water zone as critical resource ground water, the NFA Letter Executive Summary, Section 2.2.4 assumes the ground water to be a "Class A Aquifer" and applies the associated response requirements. Related deficiencies of the original NFA Letter included:
  - i. Failure to identify, pursuant to OAC 3745-300-10(C)(1)(a), that the village of Bremen's public water system uses the buried valley aquifer and the Property is contained within the drinking water source protection area for a public water system using ground water. The NFA Letter was issued

without the review of Ohio EPA's Central District Office-Division of Drinking and Ground Waters files, as required by OAC 3745-300-06(D)(2)(b)-(c).

- ii. Failure to identify, pursuant to OAC 3745-300-10(C)(1)(b), the high yield of the buried valley aquifer underlying the Property. The NFA Letter did not report use of either regional ground water yield information pursuant to OAC 3745-300-07(D)(8) that shows the yield of the buried valley aquifer between 100 to 500 gallons per minute, or on-Property yield testing pursuant to OAC 3745-300-07(D)(9).
- g. The Phase II Property Assessment failed to include VAP-certified data for vinyl chloride at or below the applicable standard, in accordance with OAC 3745-300-08(F). The unrestricted potable use standard ("UPUS") for vinyl chloride is 2  $\mu\text{g/L}$ . The NFA Letter's analytical reports present vinyl chloride data at a "< 5  $\mu\text{g/L}$  concentration limit" based on the 5  $\mu\text{g/L}$  reporting limit used by the certified laboratory, Blackhand Laboratory. The NFA Letter provided certified data for vinyl chloride only for concentrations above the 5  $\mu\text{g/L}$  reporting limit; see Phase II report, Tables 1 and 2. As a result, the NFA Letter presented no data for vinyl chloride at concentrations between 2 and 5  $\mu\text{g/L}$ .
- h. The Phase II Property Assessment failed to use modeling in accordance with OAC 3745-300-07(F). The original NFA Letter relied on modeling to evaluate the exposure pathway and to achieve the point of compliance for potable use of Class A ground water. The Executive Summary, section 2.4, refers to the model as using conservative assumptions and that results indicate no COCs will reach the Property's boundary above UPUS (unrestricted potable use standards for ground water). However, the model relied upon chlorinated solvent plume maps and data which did not accurately reflect the COC concentrations shown in the available analytical data. The modeling could not be calibrated or field-validated in accordance with OAC 3745-300-07(F)(3), and the model results did not correlate with observed Property conditions.
- i. The Phase II Property Assessment failed to include the analytical results for the COCs detected in MW-19 during the August 29, 2002 sampling event, as required by OAC 3745-300-07(D)(6)(d). The August 29, 2002 sampling chain of custody form references the event. Mr. Smalley later submitted results that showed TCE at 46  $\mu\text{g/L}$  which is above the 5  $\mu\text{g/L}$  standard, and *cis*-1,2-DCE at 34  $\mu\text{g/L}$  which is below the 70  $\mu\text{g/L}$  standard.
- k. The NFA Letter failed to account for the performance, or to include an O&M plan for future performance, of the remedial activities necessary to

demonstrate the COCs in ground water emanating from the Property achieve the applicable standards. Mr. Smalley relied on limited sampling data and unrepresentative flow modeling to conclude the Property complies with applicable standards. OAC 3745-300-07(G) and 3745-300-15(A) require implementation of a remedy to demonstrate the Property complies with applicable standards, when the existing NFA Letter data did not demonstrate compliance with the standards. The Phase II report, Section 8, Tables 1 and 2, showed concentrations of COCs above UPUS detected in six wells: MW-4, 6, 11, 12, 20, and 25.

19. Due to the deficiencies described above, the original NFA Letter was not prepared or issued in accordance with OAC 3745-300-13.

NFA Letter demonstration of compliance with applicable standards for ground water - effects of well network deficiencies

20. It is the obligation of a CP, as described in ORC 3746.11(A) and OAC 3745-300-13(A), to determine that a property complies with applicable standards in order to issue a NFA letter.
21. The original NFA Letter issued by Mr. Smalley failed to demonstrate the Property's compliance with the applicable standards contained in ORC Chapter 3746 and OAC Chapter 3745-300.
22. During review of the NFA Letter, Ohio EPA learned that wells installed to correct Ohio EPA-identified monitoring deficiencies were placed incorrectly or in unnecessary locations: Well set EW-2 / EW-2D was installed on September 17, 2004 further south than indicated on the prior Smalley & Associates ("SAI") map (dated 8/30/04) submitted to Ohio EPA with the draft "Revised NFA Addendum (NFA2)" for prior approval. The changed location resulted in the need for more well sets (EW-5 / EW-5D, EW-6 / EW-6D) to fill data gaps. The second addendum accounts for the installed additional wells.
23. Since review of the NFA Letter as revised, and the issuance of the Covenant, Ohio EPA became aware of significant deficiencies in both the condition and construction of ground water monitoring wells that make up the well network at the Property. Ohio EPA observed monitoring wells at the Property are of a depth shallower than that reported in Mr. Smalley's submissions related to the NFA Letter, addenda, and O&M Plan implementation. Ohio EPA found that the wells are in poor condition or have defective construction (see Findings [82 -85] herein).
24. The deficiencies in the well network indicate the ground water data collected from the wells has been or would be insufficient to support a determination of

compliance with applicable standards.

Remedial activities under the O&M Plan

25. The O&M Plan relies on monitoring of COCs in early warning ("EW") wells just upgradient of or at the Property boundary, to determine whether the chlorinated solvent plume will emanate from the Property at concentrations above applicable standards. The designated EW wells are: EW-1, 1D; 2, 2D; 3, 3D; 4, 4D; 5, 5D; 6, 6D; as well as MW-21, 21D; 22, 22D, for a total of 16 wells (8 well sets). More specifically, O&M Plan Sections 2.4 - 2.7 provide:
  - a. Monitoring will occur on a quarterly basis for at least the first two years, with sampling conducted in February, May, August, and November of each calendar year (see Sections 2.4-2.5);
  - b. Collected ground water samples will be submitted to a certified laboratory (see Section 2.6); and
  - c. Analytical results will be reported to the method detection limit ("MDL") and practical quantitation limit ("PQL"). If the laboratory does not use PQLs, the reporting limit ("RL") may be reported (see Section 2.6).
26. O&M Plan Sections 2.7 and 3.0 call for various notifications to Ohio EPA, including:
  - a. Semi-annual reports of the ground water monitoring results, due within 30 days of completion of the May and November sampling events (see Section 3.0);
  - b. Verbal and written notification if COCs are detected at or above the MDL in the EW wells, due within 15 days of receipt of the analytical results that indicated the initial detection of COCs at or above the MDL (see Sections 2.7, 3.0 and 6.0).
27. O&M Plan Section 6.0 sets forth the measures that will be taken in response to COC detections:
  - a. If a COC concentration is detected at or above the MDL – the performance of confirmatory sampling within 15 days of receipt of the analytical results;
  - b. If confirmatory sampling verifies any COC concentration in excess of the MDL – the implementation of the Contingency Plan for Remediation or "CPFR"; and

- c. Notifications to Ohio EPA, verbally and in writing, of the confirmation sampling.

First semi-annual report - submitted late and without required MDL data; failure to notify

- 28. The first semi-annual report under the O&M Plan was due on June 30, 2005. Following Ohio EPA's August 9, 2005 written notice of the failure to submit the report, Mr. Smalley submitted a semi-annual report on behalf of the Volunteer on September 12, 2005.
- 29. The first semi-annual report revealed the analytical data from the May of 2005 quarterly sampling events was not obtained as directed by the O&M Plan.
  - a. The analytical data was reported at the RL level. As a result, the submitted data did not show the COC concentrations at the required lower, MDL values.
  - b. Ohio EPA later learned that Mr. Smalley had not requested MDL data from the certified laboratory for the May 2005 event.
  - c. Due to Ohio EPA's December 2005 request, the laboratory was later able to derive the MDL values from the existing May 2005 sample analytical data.
- 30. The first semi-annual report revealed certain notifications to Ohio EPA should have been made based on the May 2005 sampling results, pursuant to the O&M Plan:
  - a. The certified laboratory had mailed the analytical results to Mr. Smalley by letter dated June 24, 2005. Ohio EPA did not receive the results until Mr. Smalley submitted the first semi-annual report on September 12, 2005 (and delivered supplemental data through October 26, 2005).
  - b. Prior to September 12, 2005, no other notifications were provided in accordance with O&M Plan Sections 3.0 and 6.0, i.e., neither verbal or in writing, or regarding the detected COCs or triggered confirmation sampling. See 11/10/05 and 3/30/06 letters by Ohio EPA.
- 31. Mr. Smalley submitted the analytical results for the August 2005 quarterly monitoring initially upon request in September of 2005, and as part of the second semi-annual report, dated January 10, 2006. The August 2005 data, like the May 2005 data, did not report to the MDL level required by the O&M Plan.

May and August 2005 sampling data - COC detections

- 32. According to the collective May and August of 2005 quarterly monitoring data

submitted by Mr. Smalley, COCs were detected in EW wells:

- a. *Cis*-1,2-DCE at 10.2  $\mu\text{g/L}$ , in MW-22D (5/31/05 sampling event; 6/11/05 results);
  - b. *Cis*-1,2-DCE at 13.3  $\mu\text{g/L}$ , in EW-1D (8/31/05 sampling event; 9/10/05 results); and
  - c. *Cis*-1,2-DCE at 6.75  $\mu\text{g/L}$ , in EW-2 (8/31/05 sampling event; 9/10/05 results).
33. Further, the May and August, 2005 data reevaluated by the certified laboratory to the MDL (as "J" values), submitted to Ohio EPA on February 22, 2006 shows:
- a. *Cis*-1,2-DCE at 1.27  $\mu\text{g/L}$ , in MW-21D (5/31/05 sampling event; 6/11/05 results);
  - b. TCE at 1.27  $\mu\text{g/L}$ , in MW-22D (5/31/05 sampling event; 6/11/05 results);
  - c. *Cis*-1,2-DCE at 0.98  $\mu\text{g/L}$ , in EW-1 (8/31/05 sampling event; 9/10/05 results);
  - d. *Cis*-1,2-DCE at 0.5  $\mu\text{g/L}$ , in EW-1 (8/31/05 sampling event; 9/10/05 results); and
  - e. TCE at 1.16  $\mu\text{g/L}$ , in MW-21D (8/31/05 sampling event; 9/10/05 results).
34. Ohio EPA's review of Mr. Smalley's first semi-annual report, and a submitted analytical report dated September 2005, revealed additional reporting deficiencies created by the May 2005 and August 2005 sampling that do not comply with the O&M Plan.
- a. The first semi-annual report states the results from the May 2005 sampling of MW-22D as non-detect even though the analytical data shows *cis*-1,2-DCE at 10.2  $\mu\text{g/L}$ .
  - b. The semi-annual report states the results at MW-9D were non-detect from the May 2005 sampling, even though the well was never sampled according to the sampling chain of custody.
  - c. Other monitoring well sampling results are also misreported. See Ohio EPA's 11/10/05 letter.
  - d. Overall, the quarterly sampling results collected through August of 2005 varied too significantly (spatially or temporally or both) to confirm the COC detections using only those results. For example, during the August 2005

quarterly sampling event, sampling results showed *cis*-1,2-DCE at 6.75  $\mu\text{g/L}$  at EW-2, however, no confirmation sampling was conducted as specified in the O&M Plan. During the following, November 2005 quarterly sampling event, the sampling results showed *cis*-1,2-DCE as nondetect at EW-2.

November 2005 sampling data - New COC detections

35. As requested by Ohio EPA, Mr. Smalley emailed on December 28, 2005 the analytical results from the November 2005 sampling event. The analytical report showed:
- a. Unexpected results, indicating in various wells the presence of COCs that were previously undetected in ground water, e.g., non-chlorinated solvents such as toluene, ethylbenzene and total xylene and trimethylbenzenes.
  - b. The certified laboratory noted that toluene detections in samples analyzed from December 13 to 15, 2005 may be due to a sealant used during laboratory re-roofing.
  - c. Those samples analyzed before the laboratory's roofing project, however, contained various COCs except for toluene. See 3/30/06 Ohio EPA letter.
  - d. Given the detection inconsistencies, the November 2005 sampling detections could have resulted from cross contamination created by sampling or field protocol employed by Mr. Smalley and SAI staff.

Confirmation sampling occurs during January 2006 but with unexpected results

36. Despite the detections of COCs in EW wells based on the May, August and November of 2005 quarterly sampling events, neither Mr. Smalley nor the Volunteer initiated confirmation sampling (nor implementation of the Contingency Plan for Remediation or "CPFR") in accordance with O&M Plan Section 6.0.
37. In a series of correspondence, Ohio EPA re-informed the Volunteer and Mr. Smalley of the need to perform confirmatory sampling and the CPFR in accordance with the O&M Plan. See 11/10/05, 3/30/06 and 4/5/06 letters by Ohio EPA. On January 5, 2006, Mr. Smalley conducted confirmatory sampling based on the November 30, 2005 sample results and Ohio EPA's notifications.
38. On January 13, 2006, Mr. Smalley submitted to Ohio EPA a semi-annual report based on data from the August and November 2005 quarterly sampling events. The report also included results from a January 5, 2006 confirmatory sampling event.

39. The January 2006 confirmatory sampling event, like the November 2005 event, showed the presence of previously undetected COCs, e.g., non-chlorinated volatile organic compounds. The source of the variations appeared inconclusive:
  - a. Ohio EPA learned that for the January EW-2D sample showing TCE at 3.56  $\mu\text{g/L}$ , Mr. Smalley had requested the laboratory reanalyze the sample, at which time no TCE was detected. Mr. Smalley also requested reanalysis of samples collected from 3 other wells with COC detections. The reanalysis yielded no detections.
  - b. Other sampling event information pointed to the potential for field or sampling protocol errors. See 3/30/06 Ohio EPA letter.
40. Based on the collective available information, Ohio EPA considered the January 2006 sampling results, like the November 2005 results, unreliable to confirm presence of TCE or any other COCs in ground water. See 3/30/06 Ohio EPA letter.

Ohio EPA's field observations during the February and March 2006 sampling events

41. To determine if COC detections are due to the presence of COCs in ground water or any laboratory or field sampling procedures, Ohio EPA arranged to observe the February 2006 quarterly sampling event conducted by Mr. Smalley. Under the arrangement, Ohio EPA would collect split samples from the EW wells and other select wells, for independent analysis.
42. During the February 21-23, 2006 quarterly sampling event, an Ohio EPA geologist observed various deficiencies in sampling protocol employed by Mr. Smalley and SAI staff, including:
  - a. Mr. Smalley's proposed order of sampling that, if implemented, would have resulted in the sampling of wells in order of most contaminated to least contaminated areas. At Ohio EPA's recommendation, Mr. Smalley agreed to reverse the order.
  - b. Mr. Smalley's decontamination and quality control procedures would result in potential detergent residue in SAI samples. The procedures may have contributed to increased vial head space in the sample of EW-1 collected by SAI staff under the procedures. (Increased head space would allow for emission of volatile organic solvents from the sample.) Following the initial collection, at Ohio EPA's recommendation, Mr. Smalley agreed to include additional rinsing steps in the decontamination procedures for sampling equipment.

- c. Mr. Smalley directed his staff to sample EW-1, without regard to potential contamination from exhaust fumes from a nearby pickup truck. At Ohio EPA's recommendation, Mr. Smalley agreed to turn off vehicles during subsequent sampling. The EW-1 sample revealed detections of ethyl benzene and total xylenes (compounds that may have resulted from exhaust fumes); those compounds were not detected in Ohio EPA's sample (collected after the truck engine was turned off). See 5/4/06 letter.
43. During the February 2006 sampling event, Mr. Smalley noted to Ohio EPA that statements made, in a third-party litigation, by the Superior Fibers plant manager indicated that historical TCE dumping occurred in a slightly different location than that presented in the NFA Letter. For litigation purposes, Mr. Smalley performed additional soil sampling, which shows the soil contamination at the Property is more extensive than that indicated by the NFA Letter.
44. As COCs were detected in EW wells during the February 2006 sampling event, confirmatory sampling of those wells was conducted on March 16, 2006 pursuant to the O&M Plan.
45. Ohio EPA observed the March 2006 confirmatory sampling event conducted by Mr. Smalley and SAI staff. For this sampling event, Mr. Smalley and SAI staff used disposable, dedicated bailers to prevent cross-contamination between wells.
46. The results of the February 2006 quarterly sampling event showed COCs at or above the MDL in 9 of the 16 EW wells. March 2006 confirmation sampling confirmed the COC detections above MDLs in 5 EW wells, including TCE, *cis*-1,2-DCE and vinyl chloride. Detections in 3 of the 5 EW wells exceeded the unrestricted potable use standard ("UPUS") for vinyl chloride. See Ohio EPA's 5/4/06 letter and summary table.

New 2006 data reveals apparent expansion of chlorinated solvent plume

47. When compared to the data previously submitted in the NFA Letter or by Mr. Smalley during O&M activities, the February and March 2006 data reveals at least a 90% increase in the size of the chlorinated solvent plume. The February and March 2006 data also indicates that neither the vertical nor horizontal extent of the chlorinated solvent plume could be known from the data reported to-date.
48. The February and March 2006 sampling event data reveals at least 26 wells (both EW and other well locations) where COCs were not previously recorded. For example, the NFA Letter reports *cis*-1,2-DCE at  $< 5 \mu\text{g/L}$  in the ground water sampled from MW-18 during August 2002. In contrast, the 2006 sampling of MW-18 shows a concentration of *cis*-1,2-DCE at  $2500 \mu\text{g/L}$ .

49. Further, the March 2006 data confirms COCs at concentrations above UPUS in approximately 19 wells (both EW and other well locations), as compared to only 4 wells using August or November 2005 sampling event results.
50. For reasons including the significant data discrepancies noted above, Ohio EPA considered the February and March 2006 sampling event data to render unreliable the sampling data previously submitted by Mr. Smalley.
51. By letter dated May 4, 2006, Ohio EPA reminded the Volunteer and Mr. Smalley that the O&M Plan requires implementation of the Contingency Plan for Remediation, or CPFR, within 45 days of receipt of the March 2006 confirmation sampling results. The letter notes that SAI has been developing a revised O&M Plan for an alternative, contingent remedial technology for Ohio EPA's review and approval prior to the O&M Plan remedy implementation deadline (May 15, 2006.)

Remedy under O&M Plan triggered - CP proposes new remedy to replace CPFR  
remedy; pilot study

52. During the February 2006 quarterly sampling activities, Mr. Smalley expressed concern over the efficacy of the current CPFR - a bioaugmentation remedy - in the O&M Plan.
53. Given plume and site conditions, Ohio EPA staff agreed to consider Mr. Smalley's proposal for use of a chemical oxidation (potassium permanganate) treatment as a contingency remedy. Chemical oxidation treatment has been successfully used for select treatment of source areas, i.e., contamination "hot spots" at other sites in the state.
54. On March 31, 2006, Mr. Smalley communicated a proposal for site-wide use of the chemical oxidant treatment for the Property. Initially, however, Mr. Smalley had expressed concern about the availability of sufficient funds for more than only a limited scope, incremental treatment plan. See 3/13/06 email.
55. During a March 31, 2006 meeting and April 4, 2006 conference call, Ohio EPA collectively informed Mr. Smalley to:
  - a. Obtain necessary underground injection control (UIC) program approval to perform treatment injections;
  - b. Determine the effectiveness of the proposed chemical oxidation technology for the Property, including communicating site-specific soil and ground water information to chemical injectate suppliers;

- c. Perform a pilot study to evaluate the radius of influence for the proposed injection points for the Property; and
  - d. Submit a proposed work plan and revised O&M plan and implementation schedule for the alternative remedy for Ohio EPA to review and approve prior to the O&M Plan deadline for the completion of the CPFR-specified remedy.
56. Mr. Smalley did not submit to Ohio EPA an application for UIC program approval until approximately May 10, 2006, which delayed the ability to perform a pilot study. Ohio EPA issued the UIC permit on May 17, 2006.

Ohio EPA's requests and guidance to Mr. Smalley for necessary site-specific information

57. As early as March 31, 2006, Ohio EPA communicated with Mr. Smalley regarding the type of site-specific data that he would need to support the use of his proposed site-wide treatment for the Property.
58. Further, on May 17, 2006 Ohio EPA provided Mr. Smalley a specific list of data that he would need to support his proposed site-wide use of the alternate contingency remedy for the Property, and that the specific data is necessary before he implements the pilot study. See 5/17/06 email and attachment.
59. An evaluation of the effectiveness of a chemical oxidation technology requires evaluation of the property's soil and ground water characteristics for chemical oxidant demand. For example, a chemical oxidant supplier requires analysis of soil and ground water samples to calculate oxidant demand, which determines the amount of chemical injectate required for site treatment.
60. Repeated delay and extensive miscommunication resulted from Mr. Smalley's actions in obtaining and relaying the information necessary for a permanganate (injectate solution) supplier to calculate amount of injectate based on the Property's conditions. Mr. Smalley's miscommunications and delays in obtaining the supplier's injectate calculations prevented Mr. Smalley, and the Agency, from evaluating the effectiveness or estimated cost of his proposed alternate remedy.
- a. On various occasions, Ohio EPA communicated directly with the supplier to clarify the misinformation Mr. Smalley had provided the supplier, or to verify the accuracy of Mr. Smalley's report to Ohio EPA of his conversations with the supplier.
  - b. Mr. Smalley noted to Ohio EPA that he had collected soil and ground water samples on or about April 6, 2006.

- c. Ohio EPA, however, made repeated requests for Mr. Smalley to submit the samples to the permanganate supplier to calculate oxidant demand for the Property. Potassium permanganate supplier Carus Chemical Company did not receive the necessary samples until May 26, 2006. See Carus Chemical Company report dated June 8, 2006.

See e-mail correspondence dated April 25, May 17, 26 and 31, and June 1, 2, 4, 8, and 9, 2006. See also 6/23/06 Ohio EPA letter.

Pilot study piezometers were installed before CP obtained data to support study or proposed remedy

61. By approximately April 25, 2006, Mr. Smalley had installed piezometers (wells) for the pilot study to evaluate injections during his pilot study for the proposed remedy. The installation was completed even though Mr. Smalley had not obtained the site information needed to support use of the treatment to implement the study until receipt of the June 8, 2006 Carus Chemical Company report.
62. Mr. Smalley proposed to Ohio EPA during an April 12, 2006 meeting to install 20 to 22 piezometers. However, the piezometers later marked on SAI figures and installed ultimately increased to 53 piezometers:
  - a. Mr. Smalley submitted after the April 12 meeting on the same day a figure dated April 10, 2006 that depicts a total of 37 piezometers (including piezometers in locations not proposed to Ohio EPA during the meeting).
  - b. Mr. Smalley submitted a figure dated April 25, 2006 that shows a total of 55 piezometers as installed (including piezometers in locations not proposed to Ohio EPA). See 6/23/06 Ohio EPA letter.
  - c. On May 23, 2006, Mr. Smalley submitted a revised figure to reflect the quantity and location of the installed piezometers. Ohio EPA observed during August 21, and September 12, 2006 site visits a total of 53 piezometers and that some were installed in locations inaccurately depicted on the submitted figures.

Apparent lack of understanding of chemical oxidation process

63. Mr. Smalley used the analytical results for metals and chemical oxygen demand from the analysis of soils collected at the property to support his calculations of chemical oxidant injectate volumes.

64. Metals and chemical oxygen demand data are not the only factors used to calculate the oxidant demand of environmental media at a property, however. A key factor requires initial bench scale analysis of the soil and ground water oxidant demand of samples collected from the property.

Deficiencies in revised O&M plan, remedial work plan, and proposed oxidation remedy

65. On May 1, 2006, Mr. Smalley submitted a draft revised O&M plan and remedial work plan for Ohio EPA's review and comment. The submitted documents contained numerous deficiencies that prevented Ohio EPA from an expeditious review or approval. See Ohio EPA's 6/23/06 letter, and 5/17/06 email regarding a 5/17/06 conference call.
66. Ultimately, the June 8, 2006 Carus Chemical Company report revealed that Mr. Smalley's proposed Property-wide use of the chemical oxidation remedy would require a lengthy, labor-intensive, and constant treatment process. The proposed treatment would prove technically infeasible and cost-prohibitive to implement. See also 6/23/06 Ohio EPA letter.

Modified treatment plan - delays through miscommunication of site information

67. In response to the June 8, 2006 Carus report, the Volunteer, Mr. Smalley, and Ohio EPA met on June 12, 2006 to discuss remedial alternatives for the Property. Ohio EPA understood that Mr. Smalley would promptly submit a proposal for another remedial alternative, e.g., by June 19, 2006. Ohio EPA received no proposal from Mr. Smalley, however.
68. On June 22, 2006, Ohio EPA suggested to the Volunteer and Mr. Smalley a modified remedial approach to treat the chlorinated solvent plume at the Property. The treatment plan would consist of a line of persulfate (oxidation) treatment adjacent to the Property boundary, coupled with an upgradient, oxygen release compound ("ORC") barrier system and targeted chemical oxidation of the source area near MW-11.
69. Mr. Smalley and Ohio EPA determined during the June 22, 2006 meeting certain site assumptions for the modified treatment plan. The site assumptions would include ground water flow velocity of 5.29 feet per day at the Property (based upon Bremen wellfield transmissivity data). See 6/23/06 Ohio EPA email.
70. As with his communications with permanganate supplier Carus Chemical, Mr. Smalley's correspondence with a ORC solution supplier regarding the site-specific conditions resulted in miscommunication and further delay. See June 22-23, 2006 correspondence. For example, Mr. Smalley communicated to the ORC solution supplier a ground water flow velocity of 3 feet per day. See

6/23/06 Ohio EPA email.

71. Further, Mr. Smalley's communications with the ORC solution supplier included misleading information regarding Ohio EPA's role with the remediation. See 6/23/06 Ohio EPA email.

Apparent lack of understanding on installation of double-cased wells

72. During the June 22, 2006 meeting in response to Mr. Smalley's request, Ohio EPA staff explained to him the process for installing a double-cased well. Ohio EPA staff became increasingly concerned during the meeting that Mr. Smalley and SAI staff has insufficient knowledge about well installation. See 6/23/06 Ohio EPA email.
73. Improper construction or poor development of wells can result in the contamination of lower ground water zones or in an inability to collect representative samples of ground water from the well.

Reliance on inaccurate ground water elevations

74. During a June 22, 2006 meeting and during prior site visits, Mr. Smalley noted he had a zeroing problem with the equipment used in previous surveys of monitoring wells at the Property.
75. On June 23, 2006, Ohio EPA communicated to Mr. Smalley that the hydraulic gradients he provided in his June 20, 2006 email could not be used to evaluate site information.
76. In a June 29, 2006 email to Ohio EPA, Mr. Smalley revealed the survey equipment he had used to survey the ground water wells at the Property would not completely zero when turned 180 degrees and the prior ground water elevation maps were not based on exact locations of wells on site.
77. Ground water flow maps, modeling of the chlorinated solvent plume and other Phase II findings that support the NFA Letter rely on the inaccurate surveying.

Ohio EPA's September, 2006 observations of monitoring well construction and well conditions

78. Effective mid-July, 2006, consulting firm CH<sub>2</sub>M Hill and CP Julianne Schucker assumed oversight of voluntary action activities at the Property, in the place of Mr. Smalley and SAI, as a result of negotiations between the Volunteer and the prior property owner.

79. As a result of observations by Ohio EPA during an August 21, 2006 site visit and monitoring well depth measurements performed by CH<sub>2</sub>M Hill, Ohio EPA further evaluated the installed monitoring wells at the Property.
80. On September 26, 2006, Ohio EPA staff measured some of the wells at the Property for the depth from the surface to the casing bottom (well depth) and depth of silt. Observations were made of 4 of the 16 EW wells and 12 of the other 68 monitoring wells.
81. Ohio EPA compared the well data to the SAI well logs, which Mr. Smalley submitted with the NFA Letter, as amended by the addenda, and in the first semi-annual report.
82. Comparing the measured well depths to the submitted well log data revealed a discrepancy for most of the examined wells. For example:
  - a. EW-2D - 25.25 feet shallower (log: 35 feet -v- measured depth: 9.75 feet).
  - b. EW-4D - 9.3 feet shallower (log: 35 feet -v- measured depth: 25.7 feet).
  - c. EW-5D - 10.10 feet shallower (log: 36 feet -v- measured depth: 25.9 feet).
  - d. EW-6D - 8.00 feet shallower (log: 36 feet -v- measured depth: 28 feet).
  - e. MW-22 - 14.75 feet shallower (log: 27 feet -v- measured depth: 12.25 feet).
  - f. MW-7D - 22.70 feet shallower (log: 45 feet -v- measured depth: 22.3 feet).
83. A well depth discrepancy of more than one to two feet would rarely if at all result from an installation by an experienced geologist or monitoring well installer.
  - a. The depth discrepancies found in the Property wells, such as described above, render the wells incapable of representing ground water quality at the listed well log depth. The wells may not be capable of producing representative data for even the shallower, actual well depth because of siltation and associated inadequate filter-pack construction around the well screens.
  - b. The NFA Letter, O&M Plan, relies on the depths of the EW wells as listed in the well logs to provide the depth coverage needed to demonstrate compliance with applicable standards for ground water. The discrepancies in well depth left gaps in the monitoring well network, within the unmonitored depth intervals.

84. Also, Ohio EPA observed substantial siltation in two of the wells measured:
  - a. Delineation well (DW)-9D - up to 6 feet of silt.
  - b. EW-4D - up to 15 feet of silt.
85. Siltation, of more than a few inches in a well, likely results from the failure to install or to correctly install a filter pack for the well casing. Such siltation renders the well unusable to monitor ground water; the well would produce unrepresentative samples of ground water.
86. As a result of the observed deficiencies in the monitoring well network, data obtained from well samples would prove unreliable to accurately measure COCs concentrations in the ground water underlying the Property. Further, the wells intended to monitor the downgradient, southern boundary of the Property, such as wells EW-2D, EW-5D and EW-6D, are too shallow to measure the COC concentrations in ground water that is emanating from the Property at the depths for which the wells were reportedly screened.
87. The data collected from the ground water monitoring well network as it exists is insufficient to support a determination of the Property's compliance with applicable standards for ground water under the NFA Letter or following implementation of the O&M Plan.

#### **Unsupported Applicable Standards Determination for the Property**

88. Based on the observed deficiencies in the ground water monitoring network, the use of inaccurate water level elevation information and resulting insufficient site data, as described in Findings 74-87 herein, the NFA Letter as amended by the addenda does not (and did not) demonstrate the Property complies with the VAP standards that are applicable to ground water.
89. Accordingly, the NFA Letter does not demonstrate that the Property complies with the response requirements for the critical resource ground water, set forth in OAC 3745-300-10(F)(2), to prevent human exposure to the chlorinated solvent plume that is underlying or emanating from the Property.

#### **Analysis of CP Standards of Conduct**

90. Pursuant to OAC 3745-300-05(F), a CP is subject to standards of conduct during performance of professional services under ORC Chapter 3746 and OAC Chapter 3745-300.

91. OAC 3745-300-05(A)(8) defines 'professional services' as "any conduct in connection with a voluntary action, or in rendering a voluntary action opinion."
- a. A "voluntary action" includes without limitation, a Phase I property assessment, a Phase II property assessment, a sampling plan, a remedial plan, and remedial activities. See OAC 3745-300-01(A)(47).
  - b. A "voluntary action opinion" includes the issuance of a no further action letter. See OAC 3745-300-05(A)(13).
92. Mr. Smalley performed various professional services for the Property, including the issuance and submission of the NFA Letter, the issuance of the addenda to the NFA Letter, and the implementation of the O&M Plan activities.

Failure to act with care and diligence, or fully apply CP knowledge and skill

93. Pursuant to OAC 3745-300-05(F)(1)(a), a CP must act with care and diligence, and fully apply the CP's knowledge and skill at the time professional services are performed.
94. Mr. Smalley did not act with care and diligence, nor fully apply his CP knowledge and skill, when he:
- a. Issued the original, 2003 NFA Letter with key deficiencies, in noncompliance with OAC 3745-300-13. See Findings 17-19 herein.
  - b. Conducted or oversaw installation of the monitoring well system at the Property, which Ohio EPA has found to include discrepancies in well depth as reported, and deficiencies in the condition or construction of the wells. See Findings 22-24, 82-87 herein.
  - c. Relied upon and submitted quarterly sampling data that did not comply with the requirements for data (i.e., reporting level) described in the O&M Plan. Mr. Smalley also failed to ensure certified laboratories were informed of the need to produce certified data to the method detection limit level. See Findings 25, 29 - 31 herein.
  - d. Failed to timely notify Ohio EPA of the analytical results received from the quarterly monitoring that revealed COC detections in the EW wells, as required by the O&M Plan. See Findings 26, 30-34 herein.
  - e. Did not perform or arrange to perform confirmatory sampling in the manner required by the O&M Plan. See Findings 27, 36-40 herein.

- f. Failed to plan for the sampling of monitoring wells in a manner that would minimize contamination of samples, as observed by Ohio EPA during the February of 2006 sampling event. See Findings 41-42 herein.
- g. Installed prematurely 53 piezometers for the proposed pilot study. Mr. Smalley did not yet have the chemical oxidation information necessary to support the use of the technology for the Property when he proceeded with the installations. See Findings 55, 61 herein.
- h. Submitted inaccurate figures of the actual number and locations of the piezometers installed for the pilot study. See Finding 62 herein.
- i. Failed to obtain the site specific data needed to timely or effectively assess the usability of a contingency remedy. See Findings 63-71 herein.
- j. Did not obtain an accurate survey of ground water elevations but relied on faulty survey information for the NFA Letter and O&M Plan activities. See Findings 74-77 herein.

Failure to hold paramount public health, safety, welfare and the environment

- 95. Pursuant to OAC 3745-300-05(F)(2)(a), a CP must hold paramount public health, safety, welfare and the environment in the performance of professional services.
- 96. Mr. Smalley did not hold paramount public health, safety, welfare and the environment as required by OAC 3745-300-05(F)(2)(a) when he:
  - a. Did not identify in the original NFA Letter the existence of the Bremen wellfield, include the results of yield testing, or otherwise address the buried valley aquifer as a "critical resource" ground water. See Findings 17 - 18 herein.
  - b. Relied upon and submitted analytical information that was deficient or inconsistent with the requirements in the O&M Plan for the ground water monitoring data. See Findings 25, 29 - 31 herein.
  - c. Did not timely notify Ohio EPA of the analytical results he received from the quarterly monitoring that revealed COC detections in EW wells, as directed by the O&M Plan. See Findings 26, 30-34 herein.
  - d. Did not arrange to perform or perform timely confirmatory sampling or to implement the approved contingency remedy, as described in the O&M Plan. See Findings 27, 36-40 herein.

- e. Failed to obtain the site specific data needed to timely or effectively assess the usability of an alternative contingency remedy. See Findings 63-71 herein.
  - f. Oversaw or directly performed the installation of monitoring wells at the Property that are deficient for their intended use (i.e., too shallow or full of silt) or otherwise unreliable to assess the conditions or COC concentrations in ground water at the Property. Further, use of the existing ground water monitoring well network would not support a determination of compliance with applicable standards or the response requirements for critical resource ground water at the Property. See Findings 80-89 herein.
97. Mr. Smalley's performance as summarized in Findings 96.c. to 96.f., above, resulted in a failure to identify or address the chlorinated solvent plume at the Property under the NFA Letter or in accordance with the O&M Plan. The delay in obtaining, or failure to obtain, the necessary site data increased the threat posed by the plume to the Bremen wellfield.

Failure to follow the requirements of the VAP statute and rules

98. Pursuant to OAC 3745-300-05(F)(2)(e)(ii), in providing professional services, a CP must follow the requirements and procedures set forth in the applicable provisions of OAC Chapter 3745-300 and ORC Chapter 3746.
99. Mr. Smalley did not follow the requirements and procedures set forth in OAC Chapter 3745-300 and ORC Chapter 3746 as required by OAC 3745-300-05(F)(2)(e)(ii) when he:
- a. Issued the NFA Letter in noncompliance with OAC 3745-300-13. The NFA Letter contained key deficiencies in the Phase II Property Assessment, the demonstration of compliance with applicable standards for ground water, the performance of remedial activities, and the required content of the NFA Letter. See Findings 17-19 herein.
  - b. Relied upon data collected from monitoring wells with depths shallower than the depths reported in his submissions to Ohio EPA to-date, including in the NFA Letter, NFA Letter addenda or the O&M Plan. Further, the construction or condition of certain wells appears defective based on Ohio EPA observations. The resulting deficiencies in the ground water monitoring well network create gaps in the ground water data needed, pursuant to OAC 3745-300-07(D) and (G), to support the NFA Letter as amended, or the activities conducted under the O&M Plan. The data is insufficient to support a determination of compliance with applicable standards or the response requirements for the chlorinated solvent plume, consistent with OAC 3745-

300-10(F)(2) and 3745-300-15. See Findings 80-89 herein.

Failure to make a good faith and diligent effort to obtain accurate survey information

100. Pursuant to OAC 3745-300-05(F)(2)(e)(iii), in providing professional services, a CP must make good faith and diligent effort to obtain all relevant data, reports, and other available information regarding conditions at a property, and identify and obtain such additional data and other information as the CP deems necessary to provide professional services.
101. Mr. Smalley failed to make good faith and diligent effort to obtain all relevant data, reports, and other available information regarding conditions at a property, and identify and obtain such additional data and other information as deemed necessary to provide professional services, pursuant to OAC 3745-300-05(F)(2)(e)(iii), when he:
  - a. Did not make a good faith and diligent effort to conduct an accurate survey of ground water elevations, even though Mr. Smalley realized accurate elevation readings would be necessary to evaluate conditions at the Property. See Findings 74, 76 herein.
  - b. Relied on the faulty survey information when Mr. Smalley provided professional services during the voluntary action, instead of taking appropriate measures to repair or replace the malfunctioning equipment or otherwise correct the known errors. See Findings 77 herein.

Engaging in prohibited business practices

102. Pursuant to OAC 3745-300-05(F)(2)(h), a CP must not engage in fraudulent or dishonest business practices.
103. Mr. Smalley is engaging or has engaged in business practices prohibited by OAC 3745-300-05(F)(2)(h) when he misrepresented on his resume the academic degrees that he has earned.
  - a. His resume attached to the original NFA Letter, Phase I Property Assessment report for the Property, dated November 14, 2002, reads "*Bachelor of Science - Chemistry, Ohio University*" and "*MA in Environmental Science - Ohio University.*" The resume attached to the Phase I Property Assessment report for the Former Jeffrey Mining site, dated March 19, 2002, reads the same.
  - b. His resume attached to the Draft Phase II Property Assessment report for the Former Dublin Road Landfill site, dated June 14, 2006, reads "*Bachelor of*

*Science - Chemistry, Ohio University* and *"Masters in Environmental Science - Ohio University."* The resume on his company website at <http://www.smallenviro.com/Dennis.pdf> reads the same.

- c. According to Ohio University's records, Mr. Smalley has earned a "Bachelor of Specialized Studies in the "Specialized Studies" program of study and no masters degree or other degree. Mr. Smalley was last enrolled at Ohio University in winter of 1995. This information correlates with that contained in his initial application for CP certification submitted to Ohio EPA in 1998.
104. Mr. Smalley is engaging or has engaged in business practices prohibited by OAC 3745-300-05(F)(2)(h) when he misrepresented on his resume the academic course work that he has taken.
- a. His resume attached to the original NFA Letter, Phase I Property Assessment report for the Property, dated November 14, 2002, reads *"Ground Water Modeling and Remediation - Princeton University."* The same reference is included in the resume included with the Phase I Property Assessment report for the Former Jeffrey Mining site, dated March 19, 2002, and the Draft Phase II Property Assessment report for the Former Dublin Road Landfill site, dated June 14, 2006, and posted on his company website.
  - b. According to Princeton University's records, Mr. Smalley has never been enrolled at the university (electronic records to 1972). This information correlates with his initial application for CP certification submitted to Ohio EPA in 1998; no reference was included for Princeton University.
  - c. Princeton Groundwater, Inc., which is not affiliated with Princeton University, reports that in April of 1997, Mr. Smalley completed the Remediation Course. The company found no record of Mr. Smalley's enrollment in any other course with the company, e.g., the Groundwater Pollution and Hydrology Course.

### **III. Grounds for suspension or revocation of CP certification**

105. Pursuant to OAC 3745-300-05(G)(1), the director may suspend or revoke the certification of a CP for a period of time to be determined by the director if the director finds that, among other grounds:
- a. The CP's performance has resulted in the issuance of a no further action letter that is not consistent with applicable standards;
  - b. The CP has failed to comply with the standards of conduct established under OAC 3745-300-05(F).

See OAC 3745-300-05(G)(1)(a) and (g).

106. Based on the deficiencies of the monitoring well network, faulty survey information and resulting insufficient site data as described herein, Mr. Smalley's performance resulted in the issuance of the NFA Letter that is not (no longer demonstrated as) consistent with applicable standards contained in OAC Chapter 3745-300 and ORC Chapter 3746 for ground water.
107. Based on the foregoing performance related to the Superior Fibers Property voluntary action and the other sites as noted herein, Mr. Smalley's performance has demonstrated a pattern of performance in violation of the CP standards of conduct.
108. Pursuant to OAC 3745-300-05(G)(1), the director may suspend or revoke Mr. Smalley's certification for a period of time to be determined by the director.

### III. ORDERS

1. For the reasons outlined in the Findings above, Mr. Smalley's CP certification (CP No. 197) is hereby revoked for a time period that begins on the effective date of these Orders for a total of 4 years. In the interest of settlement, Mr. Smalley agrees to forgo applying for recertification until after January 1, 2011.
2. By January 2, 2007, Mr. Smalley shall provide the notifications required by OAC 3745-300-05(G)(4) by certified mail. By January 12, 2007, Mr. Smalley shall submit to the Director a copy of each of the required notifications. The submission to the Director shall be addressed and sent by certified mail to:

Ohio EPA, Division of Emergency & Remedial Response  
122 S. Front Street / 50 West Town Street, Suite 700  
P.O. Box 1049  
Columbus, OH 43216-1049  
Attn: VAP Manager

3. Pursuant to OAC 3745-300-05(H), to apply for recertification, Mr. Smalley agrees to comply with the criteria and procedures for certification set forth in OAC 3745-300-05(B) and OAC 3745-300-05(C) with a demonstration consistent with the criteria set forth herein. Such application for recertification shall be submitted by affidavit pursuant to OAC 3745-300-05(C)(3) and include the following information:
  - a. A demonstration that Mr. Smalley has earned a minimum of 24 professional development hour units ("PDHUs") of relevant continuing education per year

during the calendar year prior to an application for recertification in accordance with OAC 3745-300-05(D). The demonstration shall include for each PDHU event a copy of the agenda and, as made available by the instructor(s), the certificate of attendance. The demonstration shall also include a written description in a table or other summary format that provides for each event: the name or type of the event, the materials covered, the name of the instructor(s), the event date, the number of hours attended, and the location of the event. The PDHUs shall consist of:

- i. Courses, seminars or workshops instructed by persons other than entities that Mr. Smalley is employed by currently;
  - ii. At least 8 PDHUs shall consist of completion of the Initial CP Training, as set forth in OAC 3745-300-05(B)(2)(d); and
  - iii. At least 12 PDHUs shall consist of courses related to Phase II property assessment, site characterization, or subsurface investigation of brownfields.
- b. Demonstration of the effective management from start to completion of one or more brownfield site assessment and cleanup projects.
- c. A statement by Mr. Smalley that he has reviewed and will adhere to all of the standards of conduct contained in OAC 3745-300-05(F).
4. Mr. Smalley agrees to not, under ORC Chapter 3746 or OAC Chapter 3745-300, render any "voluntary action opinion" as defined by OAC 3745-300-05(A), stamp or seal any document with his CP seal, or otherwise act in a CP capacity, unless and until he has been recertified through the Director's issuance of a CP certification in accordance with these Orders and OAC 3745-300-05. Nothing in these Orders prohibits Mr. Smalley from coordinating, or working in a consultant capacity, with VAP certified professionals.
5. Notwithstanding this revocation action, Mr. Smalley agrees to cooperate fully in each audit of an NFA letter that he has issued and submitted to Ohio EPA, and in the production of documents related to those audits or other voluntary action matters, as required by ORC 3746.17 to 3746.18 and OAC 3745-300-05(I) and 3745-300-14.

#### **IV. RESERVATION OF RIGHTS**

Ohio EPA and Mr. Smalley each reserve all rights, privileges and causes of action, except as specifically waived in Waiver Section of these Orders.

**V. WAIVER**

In order to resolve disputed claims, without admission of fact or liability, Mr. Smalley consents to the issuance of these Orders and agrees to comply with these Orders. Compliance with these Orders shall be a full accord and satisfaction to Ohio EPA for Mr. Smalley's civil liability for the matters specifically addressed herein.

Neither these Orders nor the matters that are addressed herein may be used as a basis for denial of recertification for an application by Mr. Smalley that is complete and submitted in accordance with these Orders and OAC 3745-300-05(B) and (C). The entry into and participation in these Orders shall not be considered an admission of liability to Ohio EPA.

Mr. Smalley hereby waives the right to appeal the issuance, terms and conditions, and service of these Orders, and hereby waives any and all rights he may have to seek administrative or judicial review of these Orders either in law or equity.

Notwithstanding the preceding, Ohio EPA and Mr. Smalley agree that if these Orders are appealed by any other party to the Environmental Review Appeals Commission, or any court, Mr. Smalley retains the right to intervene and participate in such appeal. In such an event, Mr. Smalley shall continue to comply with these Orders notwithstanding such appeal and intervention unless these Orders are stayed, vacated or modified.

**VI. EFFECTIVE DATE**

The effective date of these Orders is the date these Orders are entered into the Ohio EPA Director's journal.

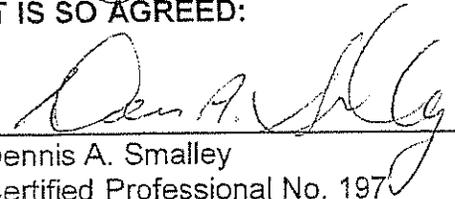
**IT IS SO ORDERED AND AGREED:**

  
\_\_\_\_\_  
Joseph P. Koncelik, Director  
Ohio Environmental Protection Agency

Date

12/21/06

**IT IS SO AGREED:**

  
\_\_\_\_\_  
Dennis A. Smalley  
Certified Professional No. 197

Date

12/14/2006