



State of Ohio Environmental Protection Agency

*Dan Tjoelker*

MAILING ADDRESS:

..ET ADDRESS:

TELE: (614) 644-3020 FAX: (614) 644-2329

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

Lazarus Government Center  
122 S. Front Street  
Columbus, Ohio 43215

12/29/00

Mr. Ben Baker  
The Dow Chemical Company  
2020 Dow Center, Room C1502  
Midland, MI 48674

RECEIVED CERTIFIED MAIL  
JAN 02 2001  
OHIO EPA/CDO

**RE: Issuance of Covenant Not To Sue for the Former Dowell Inc.  
Property 00NFA096**

Dear Mr. Baker:

I am happy to inform you that on 12/29/00, the Director of the Ohio Environmental Protection Agency ("Director") issued a Covenant Not To Sue ("Covenant") to The Dow Chemical Company for the former Dowell Inc. property located at 767 Faye Drive Heath, Ohio. The Covenant was issued as Final Findings and Orders pursuant to Ohio Revised Code ("ORC") Chapter 3746 and Ohio Administrative Code ("OAC") Chapter 3745-300. You will find the certified copy of the Covenant enclosed.

Upon the issuance of these Findings and Orders, and subject to the conditions outlined in the Covenant, Ohio EPA covenants not to sue and releases The Dow Chemical Company and its agents, employees, shareholders, officers, directors, successors and assigns, and successors and assigns of the property, from all civil liability to the State of Ohio to perform additional investigational and remedial activities at the property for the releases of hazardous substances or petroleum identified in the Phase I and Phase II Property Assessments completed in accordance with ORC Chapter 3746 and OAC Chapter 3745-300.

The issuance of the Covenant is a final action of the Director and will be public noticed in accordance with OAC 3745-47-07. The action may be appealed to the Environmental Review Appeals Commission ("Commission"). The appeal must be in writing and set forth the action complained of and the grounds upon which the appeal is based. The appeal must be filed with the Commission within thirty (30) days after notice or issuance of the action. (See ORC 3745.04 and 3745.07.) A copy of the appeal must be served on the Director within three (3) days after the appeal is filed with the Commission. The appeal may be filed with the Commission at 236 East Town Street, Room 300, Columbus, Ohio 43215.

Bob Taft, Governor  
Maureen O'Connor, Lieutenant Governor  
Christopher Jones, Director

The Dow Chemical Company  
Former Dowell Inc. Property  
Page 2

Many parties within the agency, The Dow Chemical Company, Roffman Associates, and Smalley & Associates worked hard to remove the environmental barriers associated with redeveloping this property. Congratulations on the issuance of this Covenant. If you have any questions or concerns, please feel free to contact me at (614) 644-2285.

Sincerely,

A handwritten signature in black ink, appearing to read "Amy Yersavich". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Amy Yersavich, Manager  
Division of Emergency and Remedial Response  
Voluntary Action Program

Enclosure

cc: Atul Pandey, CP, Smalley & Assoc.  
Amiram Roffman, Roffman Assoc.  
Dan Tjoelker, DERR, CDO  
Luann Hoover, Legal Office  
CO DERR-VAP Files

OHIO E.P.A.

DEC 29 2000

ENTERED DIRECTOR'S JOURNAL

BEFORE THE  
OHIO ENVIRONMENTAL PROTECTION AGENCY

In the matter of:

The Dow Chemical Company  
2020 Dow Center Road, Room C1502  
Midland, MI 48674

Covenant Not to Sue

Director's Final Findings  
and Orders

Regarding property known as:

The Former Dowell Inc. Property  
767 Faye Drive  
Heath, OH 43056

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

FINDINGS

1. A No Further Action Letter, No. 00NFA096 (the "NFA Letter"), was issued on June 28, 2000 and submitted on July 3, 2000 to Ohio EPA's Division of Emergency and Remedial Response, Voluntary Action Program ("VAP") on behalf of The Dow Chemical Company (the "Volunteer"), by Atul Pandey, a certified professional, No. CP224, as defined in ORC 3746.01(E) and OAC 3745-300-01(A)(8) (the "Certified Professional").
2. The Certified Professional submitted to Ohio EPA an addendum, dated October 10, 2000, to the NFA Letter. The addendum consisted of a Corrective Declaration of Use Restrictions (recorded on October 3, 2000) to correct an error in the property description attached to the original Declaration of Use Restrictions (recorded on June 26, 2000). For purposes of these Findings and Orders, the term "NFA Letter" includes the addendum.
3. The NFA Letter describes investigational and remedial activities undertaken at the approximately 2.4787 acre property, known as the Former Dowell Inc. Property, located at 767 Faye Drive, Heath, Licking County, Ohio (the "Property"). An exact legal description of the Property is attached hereto as Exhibit 1. A site location map

I certify this to be a true and correct copy of the  
official record as filed in the files of the Ohio  
Environmental Protection Agency

*Donna J. Jackson* 12-29-00

is attached hereto as Exhibit 2. The NFA Letter includes an Executive Summary, which is attached hereto as Exhibit 3.

4. Based upon the information contained in the NFA Letter, the following investigational and remedial activities were undertaken and completed regarding the Property:
  - a. a Phase I Property Assessment, in accordance with OAC 3745-300-06, to determine whether there is any reason to believe that a release of hazardous substances or petroleum has or may have occurred on or underlying, or is emanating from, the Property;
  - b. a Phase II Property Assessment, in accordance with OAC 3745-300-07, including but not limited to investigations of identified areas of concern and affected media, to assess environmental conditions related to any release of hazardous substances and petroleum;
  - c. a demonstration of compliance with applicable standards through the application of generic direct contact standards in accordance with OAC 3745-300-08 and a Property-specific risk assessment in accordance with OAC 3745-300-09;
  - d. the removal of approximately 1085 cubic yards of contaminated soil in December 1999;
  - e. the establishment of institutional controls contained in the Declaration of Use Restrictions recorded on June 26, 2000 in the Licking County Recorder's Office as Instrument Number 200006260020324 ("Declaration"), and corrected by the Corrective Declaration of Use Restrictions recorded on October 3, 2000 in the Licking County Recorder's Office as Instrument Number 200010030031430 ("Corrective Declaration"), which restrict the Property to commercial and/or industrial uses only and which prohibit the use of the uppermost Class B ground water zone underlying the Property except for purposes of environmental investigation and remediation.
5. The Certified Professional has verified by affidavit that the investigational and remedial activities undertaken at the Property comply with the applicable standards established in ORC Chapter 3746 and OAC Chapter 3745-300, that the Property is eligible to receive a Covenant Not to Sue under the VAP, and that the voluntary action was conducted in compliance with all applicable federal, state and local laws and regulations.

6. At the time that analyses were performed, EA Group Laboratories of Mentor, Ohio was a certified laboratory, No. CL0015, as defined in ORC 3746.01(D) and OAC 3745-300-01(A)(7), whose services were used in support of the NFA Letter for the Property (the "Certified Laboratory").
7. According to information provided by the Certified Laboratory in affidavits contained in the NFA Letter, the Certified Laboratory performed analyses for which it was certified and qualified, pursuant to ORC Chapter 3746 and OAC Chapter 3745-300, that formed the basis for the issuance of the NFA Letter by the Certified Professional.
8. The Declaration was recorded on June 26, 2000 in the Licking County Recorder's Office, in accordance with ORC 3746.14 and OAC 3745-300-13(E)(13). The Corrective Declaration was recorded on October 3, 2000 to correct an error in the Property description attached to the original Declaration. A copy of the Corrective Declaration and Declaration is attached hereto as Exhibit 4. The Corrective Declaration and Declaration:
  - a. restrict the use of the Property to commercial and/or industrial land uses only; and
  - b. prohibit the use of the uppermost Class B ground water zone underlying the Property except for purposes of environmental investigation and remediation.
9. Based on the information contained in the NFA Letter, and upon all other conditions set forth in these Findings and Orders, the Property meets the applicable standards contained in ORC Chapter 3746 and OAC Chapter 3745-300 for commercial and industrial land use including but not limited to:
  - a. commercial and industrial land use category direct contact soil standards for hazardous substances in accordance with Tables III, IV, V or VI of OAC 3745-300-08 for generic numerical standards, and OAC 3745-300-09 for those standards derived through Property-specific risk assessment procedures, at a point of compliance from the surface to a depth of 10 feet;
  - b. commercial land use category generic direct contact soil standards for petroleum in accordance with OAC 3745-300-08(B)(3)(a)(i) and industrial land use category generic direct contact soil standards for petroleum in accordance with OAC 3745-300-08(B)(3)(a)(ii), at a point of compliance from the surface to a depth of 10 feet;
  - c. unrestricted potable use ground water standards (determined in accordance

with Table VII of OAC 3745-300-08 for generic numerical standards and OAC 3745-300-09 for those standards derived through Property-specific risk assessment procedures) used to satisfy the ground water response requirements in accordance with OAC 3745-300-10(F)(6)(a)(ii)(a) and (F)(6)(a)(ii)(b) in the uppermost Class B ground water zone at the Property boundary;

- d. unrestricted potable use ground water standards, in accordance with Table VII of OAC 3745-300-08 for generic numerical standards and OAC 3745-300-09 for those standards derived through Property-specific risk assessment procedures, at all points underlying the Property in the regional ground water zone at depths approximately 30 feet and more below ground surface;
- e. ground water standards based on construction/utility worker exposures derived through Property-specific risk assessment procedures in accordance with OAC 3745-300-09 for human receptor exposures not related to potable use of ground water, at all points underlying the Property in the uppermost Class B ground water zone generally located at depths between 7 feet and 20 feet below ground surface;
- f. ground water standards based on exposures of commercial or industrial workers to volatile emissions of hazardous substances or petroleum from ground water to indoor air derived through Property-specific risk assessment procedures in accordance with OAC 3745-300-09 for human receptor exposures not related to potable use of ground water, at all points underlying the Property in the uppermost Class B ground water zone generally located at depths between 7 feet and 20 feet below ground surface;
- g. soil standards derived through Property-specific risk assessment procedures in accordance with OAC 3745-300-09 to satisfy the requirements in OAC 3745-300-10(E) to ensure the protection of ground water meeting unrestricted potable use standards at all points underlying the Property in the regional ground water zone at depths approximately 30 feet and more below ground surface;
- h. soil standards based on construction/utility worker exposures derived through Property-specific risk assessment procedures in accordance with OAC 3745-300-09 for human receptor exposures not related to direct contact with soils, at a point of compliance from the surface to a depth of 10 feet;
- i. soil standards based on exposures of commercial or industrial workers to

volatile emissions of hazardous substances or petroleum from soils to indoor air derived through Property-specific risk assessment procedures in accordance with OAC 3745-300-09 for human receptor exposures not related to direct contact with soils, at a point of compliance from the surface to a depth of 10 feet.

10. Based on the information contained in the NFA Letter, and subject to all conditions set forth in these Findings and Orders, the Property is eligible to receive a covenant not to sue in accordance with ORC 3746.12(A) and the voluntary action for the Property is protective of public health and safety and the environment.

## **ORDERS**

### **Covenant**

1. Upon the issuance of these Findings and Orders, and subject to the conditions set forth herein, Ohio EPA hereby covenants not to sue and releases The Dow Chemical Company, and its agents, employees, shareholders, officers, directors, successors and assigns, and successors and assigns of the Property, from all civil liability to the State of Ohio (the "State") to perform additional investigational and remedial activities at the Property for the releases of hazardous substances or petroleum identified in the Phase I and Phase II Property Assessments completed in accordance with ORC Chapter 3746 and OAC Chapter 3745-300.

### **Conditions and Limitations**

2. The Covenant provided in Order No. 1 shall only apply to the approximately 2.4787 acre Property described in these Findings and Orders, the NFA Letter and the Exhibits attached hereto, upon which the investigational and remedial activities specified in the NFA Letter were conducted.
3. Pursuant to ORC 3746.12(B), the Covenant shall remain in effect for as long as the Property continues to comply with the applicable standards upon which the Covenant is based, as referenced in these Findings and Orders.
4. Pursuant to ORC 3746.05, any use of the Property that does not comply with the institutional controls identified herein (i.e., the use restrictions contained in the Declaration), voids the Covenant on and after the date of the commencement of the noncomplying use.
5. In the event that a ground water zone, other than the uppermost Class B ground

water zone, is used on the Property, no person shall drill through the uppermost Class B ground water zone to access a deeper ground water zone, unless the integrity of the separation between the uppermost Class B ground water zone and the deeper ground water zone is maintained. This will be accomplished by casing-off the uppermost Class B ground water zone prior to drilling to the deeper ground water zone to avoid the drawing down of contaminants from the uppermost Class B ground water zone to the deeper ground water zone.

6. Pursuant to ORC 3746.21 and 3746.171, authorized representatives of the Director shall be granted access to the Property for inspection or investigation purposes, including but not limited to determining whether the Property is being used in compliance with the use restrictions contained in the Declaration.
7. The Covenant shall not apply to releases of hazardous substances or petroleum:
  - a. that occur after the issuance of the NFA Letter to the Volunteer;
  - b. on or emanating from the Property, that are not described in the NFA Letter; or
  - c. for which investigational or remedial activities were conducted that were not in compliance with ORC Chapter 3746 or OAC Chapter 3745-300.
8. The Covenant shall not apply:
  - a. to claims for natural resource damages the State may have pursuant to Sections 107 or 113 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), 42 U.S.C. 9607 and 9613, as amended;
  - b. to claims the State may have pursuant to Section 107 of CERCLA, 42 U.S.C. 9607, as amended, for costs other than those for damages to natural resources, provided that the State incurs those other costs as a result of an action by the United States Environmental Protection Agency; or
  - c. as otherwise specifically provided in ORC Chapter 3746.
9. Nothing in ORC Chapter 3746 limits the authority of the Director to act under ORC 3734.13 and 3734.20 to 3734.23, or to request that a civil action be brought pursuant to the ORC or common law of the State to recover the costs incurred by Ohio EPA for investigating or remediating a release or threatened release of hazardous substances or petroleum at or from the Property, when the Director

determines that the release or threatened release poses an imminent and substantial threat to public health or safety or the environment.

10. Nothing in the Covenant shall be construed to limit or waive the Director's authority to revoke the Covenant in response to any of the circumstances for revocation of a covenant, as provided in ORC Chapter 3746 and OAC Chapter 3745-300.

#### **Recordation in Deed Records**

11. A copy of these Findings and Orders, including Exhibits 1 (Legal Description), 2 (Site Map), and 3 (Executive Summary) shall be recorded in the Licking County Recorder's Office, in the same manner as a deed to the Property, within sixty (60) days after the issuance of these Findings and Orders.

#### **Transfer**

12. Pursuant to ORC 3746.14 and OAC 3745-300-13(K), the NFA Letter and the Covenant Not to Sue/Findings and Orders may be transferred to any person by assignment or in conjunction with the acquisition of title to the Property.

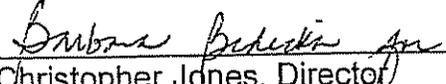
#### **Notice of Use Restrictions upon Property Conveyance**

13. In each instrument the Volunteer uses to convey the Property or any portion of the Property, the Volunteer shall include a notice of the Declaration on the Property in accordance with paragraph 6 of the Declaration attached hereto as Exhibit 4. The Volunteer shall submit to the Director a copy of each instrument containing the notice of the Declaration whenever such conveyance occurs.

#### **Notice of Transfer or Assignment of Covenant or Property**

14. Pursuant to ORC 3746.12(A)(2)(b), the transferor of the Covenant Not to Sue/Findings and Orders, or the Property or any portion of the Property, shall give written notice to the Director of any such transfer or assignment whenever such transfer or assignment occurs.

**IT IS SO ORDERED:**

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

DEC 29 2000  
Date

The Former Dowell Inc. Property  
Director's Final Findings and Orders / Covenant Not to Sue

**Exhibit 1**  
**Legal Description**

Situated in Lot 3 in the 2<sup>nd</sup> Quarter of Township 1 North, Range 12 West of the United States Military Lands, City of Heath, Licking County, Ohio (and being all of the property conveyed to Dowell Incorporated by a deed recorded in Deed Book 475, page 283, all of the property conveyed to The Dow Chemical Company by a deed recorded in Deed Book 595, page 648 and all of the property conveyed to The Dow Chemical Corporation by a deed recorded in Deed Book 596, page 103) and being further bounded and described as follows:

Beginning for a point of reference at the intersection of the center of Faye Drive and the center of the Conrail Corporation railroad and being on the corporation line separating the City of Heath and the City of Newark;

thence South 89° 58' 35" East, along the center of Faye Drive and along the corporation line separating the City of Heath and the City of Newark, a distance of 40.30 feet to a point, being the true place of beginning of this tract;

thence continuing South 89° 58' 35" East, along the center of Faye Drive and along the corporation line separating the City of Heath and the City of Newark, a distance of 317.05 feet to a 5/8 inch rebar found;

thence South 02° 25' 45" West, along the West line of a tract conveyed to Mark D. Landis by a deed recorded in Official Record Book 39, page 180 and passing a 5/8 inch rebar found on the South right of way line of Faye Drive at 20.02 feet, a total distance of 177.60 feet to a 5/8 inch rebar found;

thence North 82° 21' 00" East, continuing along said Landis tract, a distance of 92.81 feet to a 5/8 inch rebar found;

thence South 02° 20' 20" West, continuing along said Landis tract, a distance of 19.23 feet to an iron pin set on the North right of way line of the B. & O. and Penn Central railroad;

thence South 64° 47' 00" West, along the North line of said B. & O. and Penn Central railroad, a distance of 521.60 feet to a 5/8 inch rebar found;

thence North 07° 09' 00" East, along the East right of way line of the aforementioned Conrail Corporation railroad, a distance of 104.20 feet to an iron pin set;

thence South 82° 51' 00" East, along a tract originally conveyed to The Toledo and Ohio Central Railway Company by a deed recorded in Deed Book 283, page 333 and now owned by the aforementioned Conrail Corporation railroad, a distance of 20.00 feet to an iron pin set;

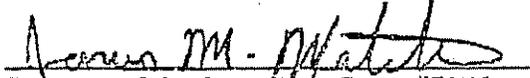
thence North 07° 09' 00" East, continuing along said Conrail Corporation tract and passing an iron pin set on the South right of way line of Faye Drive at 288.10 feet, a total distance of 308.15 feet to the place of beginning.

POOR COPY

Containing 2.4787 acres, subject to all legal road right of way and any valid and existing easements, leases, restrictions or other conditions of record.

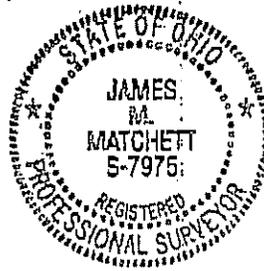
The bearings used in this description are based on the centerline of the B. & O. and Penn Central Railroad having a bearing of South 64° 47' 00" West as described in a deed recorded in Deed Book 475, page 283. Pertinent documents are all deeds mentioned, tax maps, and a previous survey plat prepared by Harold W. Hitchens, Jr., Reg. Surv. #6751, for Dow Chemical during January of 1985. All iron pins described as set are 5/8 inch diameter, 30 inches long, solid reinforcing bars with plastic identification caps.

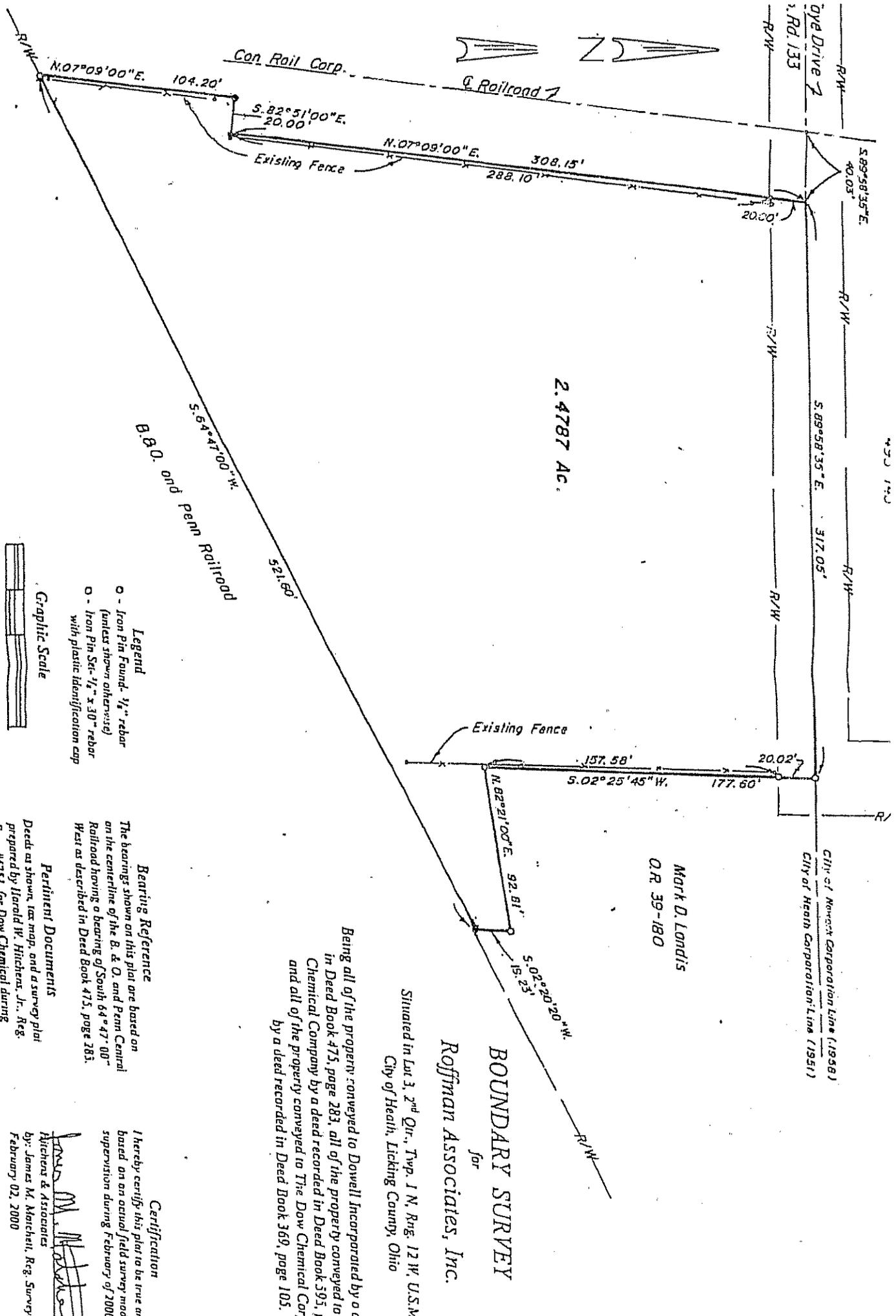
This description was prepared by James M. Matchett, Reg. Surv. #7975, from a survey made by same during February of 2000.

  
James M. Matchett, Reg. Surv. #7975  
September 26, 2000

job. #1816-01-00

RND





430 143

2.4787 Ac.

Mark D. Londis  
O.R. 39-180

**BOUNDARY SURVEY**  
for  
**Roffman Associates, Inc.**

Situated in Lot 3, 2<sup>nd</sup> Qtr., Twp. 1 N, Rng. 12 W, U.S.M.,  
City of Health, Licking County, Ohio

Being all of the property conveyed to Dowell Incorporated by a deed in Deed Book 475, page 283, all of the property conveyed to 1 Chemical Company by a deed recorded in Deed Book 595, page 105, and all of the property conveyed to The Dow Chemical Company by a deed recorded in Deed Book 369, page 105.

**Certification**

I hereby certify this plat to be true and based on an actual field survey made under my supervision during February of 2000.

*James M. Hitchens*  
James M. Hitchens  
Surveyor  
February 02, 2000

Job #1816-01-00

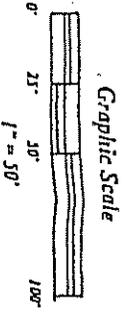
**Bearing Reference**

The bearings shown on this plat are based on the centerline of the B. & O. and Penn Central Railroad having a bearing of South 64° 47' 00" West as described in Deed Book 475, page 283.

**Pertinent Documents**

Deeds as shown, tax map, and a survey plat prepared by Harold W. Hitchens, Jr., Reg. Surv. #6751, for Dow Chemical during January of 1985.

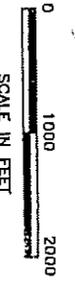
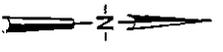
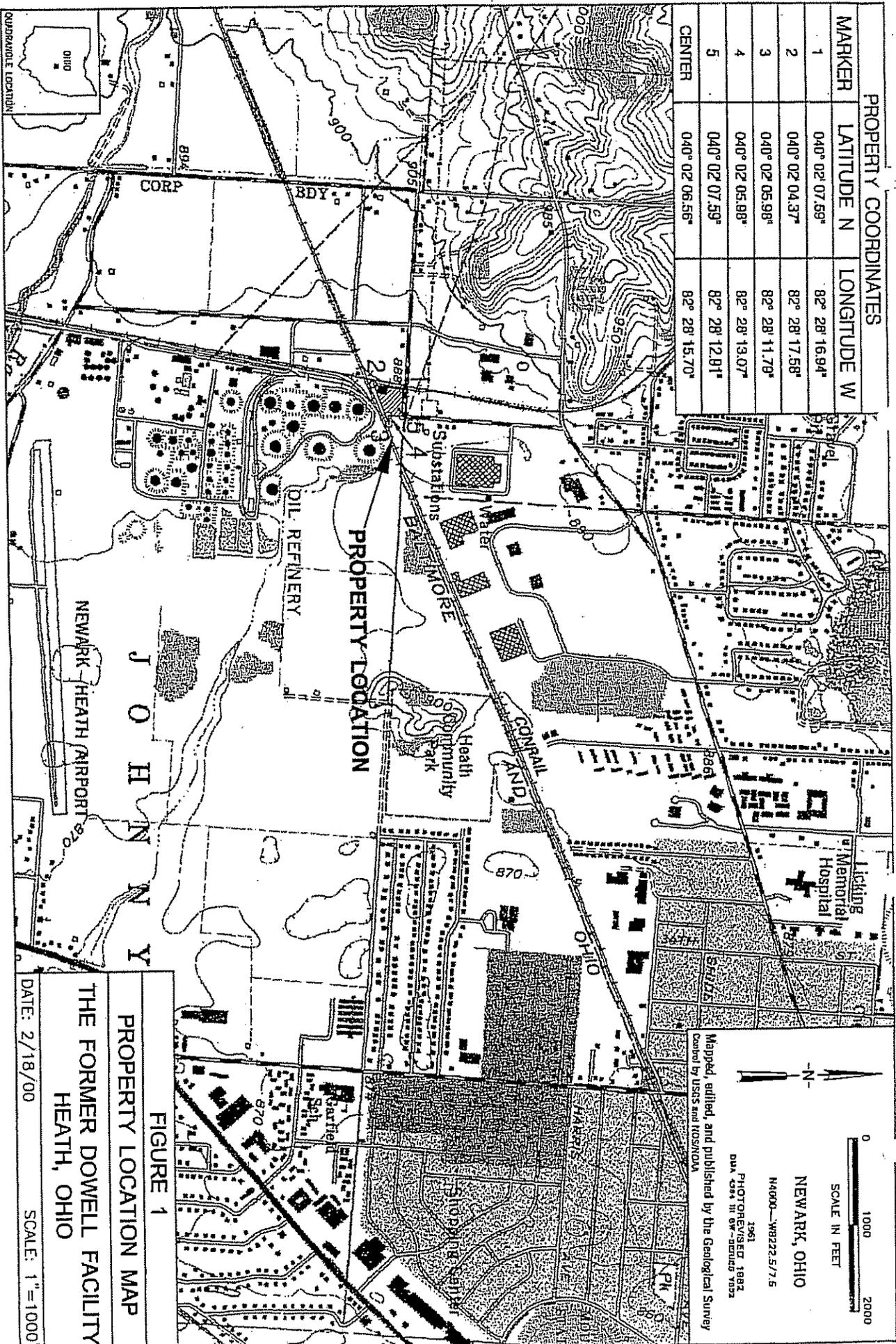
- Legend**
- o - Iron Pin Found - 1/2" rebar (unless shown otherwise)
  - o - Iron Pin Set - 1/2" x 30" rebar with plastic identification cap



The Former Dowell Inc. Property  
Director's Final Findings and Orders / Covenant Not to Sue

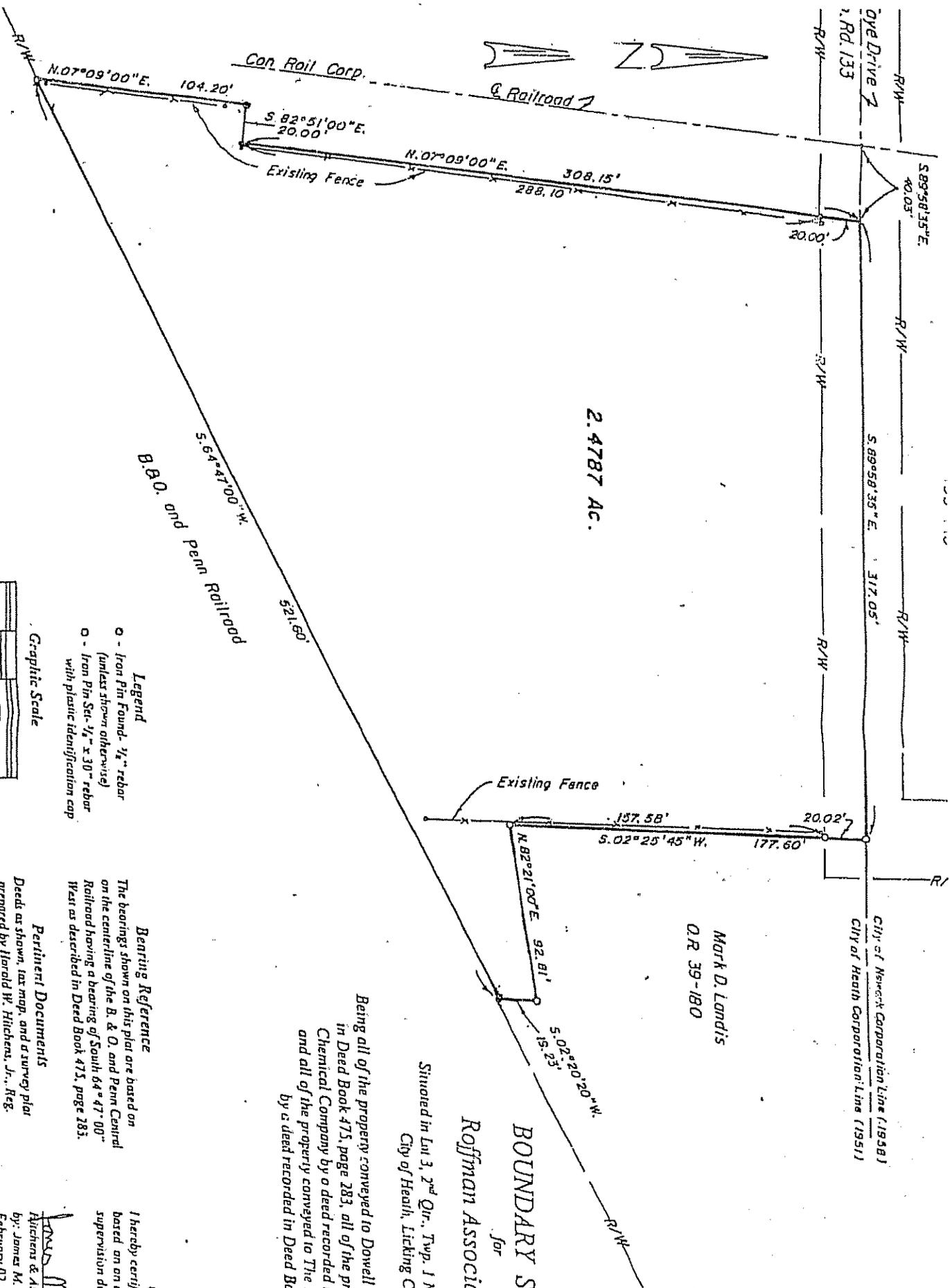
**Exhibit 2**  
**Site Map**

| PROPERTY COORDINATES |                 |                |
|----------------------|-----------------|----------------|
| MARKER               | LATITUDE N      | LONGITUDE W    |
| 1                    | 040° 02' 07.69" | 82° 28' 16.94" |
| 2                    | 040° 02' 04.37" | 82° 28' 17.58" |
| 3                    | 040° 02' 05.98" | 82° 28' 11.79" |
| 4                    | 040° 02' 05.98" | 82° 28' 13.07" |
| 5                    | 040° 02' 07.59" | 82° 28' 12.91" |
| CENTER               | 040° 02' 06.56" | 82° 28' 15.70" |

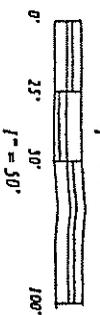


Mapled, edited, and published by the Geological Survey  
 Control by USGS and ROSNOVA  
 PHOTO REVISION 1982  
 DATA 034 III 6W-B-DOWELL 1982  
 1961  
 N4000-482225/75

FIGURE 1  
 PROPERTY LOCATION MAP  
 THE FORMER DOWELL FACILITY  
 HEALTH, OHIO  
 DATE: 2/18/00 SCALE: 1"=1000'



2.4787 Ac.



- Legend**
- - Iron Pin Found - 1/2" rebar (unless shown otherwise)
  - - Iron Pin Set - 1/2" x 30" rebar with plastic identification cap

**Bearing Reference**  
 The bearings shown on this plat are based on the centerline of the B. & O. and Penn Central Railroad having a bearing of South 64°47'00" West as described in Deed Book 475, page 283.

**Pertinent Documents**  
 Deeds as shown, tax map, and a survey plan prepared by Harold W. Hitchens, Jr., Reg. Surv. 86751, for Dow Chemical during January of 1985.

Being all of the property conveyed to Dowell Incorporated by a deed in Deed Book 475, page 283, all of the property conveyed to Chemical Company by a deed recorded in Deed Book 305, P. and all of the property conveyed to The Dow Chemical Corp. by a deed recorded in Deed Book 309, page 105.

Situated in Lot 3, 2<sup>nd</sup> Cir., Twp. 1 N., Rng. 12 W., U.S.M. City of Heath, Licking County, Ohio

**BOUNDARY SURVEY**  
 for  
**Roffman Associates, Inc.**

Mork D. Landis  
 O.R. 39-180

**Certification**  
 I hereby certify this plat to be true and based on an actual field survey made under my supervision during February of 2000.

*[Signature]*  
 Michens & Associates  
 by: James M. Marchetti, Reg. Surveyor  
 February 02, 2000

Job H1816-01-00

The Former Dowell Inc. Property  
Director's Final Findings and Orders / Covenant Not to Sue

**Exhibit 3**  
**Executive Summary**

**EXECUTIVE SUMMARY FOR THE PROPERTY  
LOCATED AT 767 FAYE DRIVE  
HEATH, OHIO 43056**

---

**1.0 INTRODUCTION**

A No Further Action (NFA) Letter was submitted to the Ohio Environmental Protection Agency (Ohio EPA) Division of Emergency and Remedial Response (DERR) Voluntary Action Program (VAP) on behalf of The Dow Chemical Company (Dow) in June 2000, by Mr. Atul Pandey, P.E. of Smalley & Associates, Inc., (SAI), Certified Professional (CP) #224.

The NFA describes the Amended Phase I Property Assessment, and the Amended Phase II Property Assessment which also includes a Remedial Action Planning and Implementation Report and a detailed Post Remediation Risk Assessment for the 2.4787 acres of the property located at 767 Faye Drive, Heath, Ohio 43056.

This executive summary of the NFA has been prepared to meet the requirements of the Ohio Revised Code (ORC) Chapter 3746. A complete copy of the NFA Letter is on file and will be available from the Ohio EPA DERR, Voluntary Action Program in accordance with the filing requirements of the Ohio Administrative Code (OAC) 3745-300-13(J).

A legal description of the 2.4787 acres of land is provided in Attachment A to this executive summary.

**2.0 SUMMARY OF NO FURTHER ACTION LETTER**

The Certified Professional (Mr. Atul Pandey, P.E.) issued an NFA Letter based upon the Amended Phase I and Phase II Property Assessments. The later includes a Remedial Action Planning and Implementation Report and detailed post-remediation risk assessment for the subject property.

A summary of the assessments is provided below. Complete copies of the Amended Phase I Property Assessment and the Amended Phase II Property Assessment Report which includes the Remedial Action Planning and Implementation Report in Appendix E and the detailed risk assessment in Section 7.0 of the report, are contained in the NFA Letter.

### 2.1 Amended Phase I Property Assessment

An Amended Phase I Property Assessment was conducted over the period of May 1999 to February 2000. A Final Amended Phase I Property Assessment Report was issued in February 2000.

The Phase I Assessment included a determination of eligibility for entry into the Ohio VAP, a review of historic and current uses of the property and surrounding properties, and an environmental history review, a review of the history of hazardous substances or petroleum releases, a property inspection and identification of "identified areas" as defined in OAC 3745-300-06(F). A summary of the Amended Phase I Property Assessment is as follows.

The property inspection confirmed that the property is currently vacant land, which has previously been used for commercial/industrial purposes. Historical search indicates that the property has been used for commercial/industrial purposes since late 1945. The property was used from 1955 by Dowell, a former division of The Dow Chemical Company (Dow), as a service center for oil and gas exploration, development and production operations. Operations ceased in 1981 and the property has been vacant since 1982. Refiners Transport and Terminal Corporation operated at the 2.4787-acre property between late 1945 and 1955.

The property has been in Dow's possession since 1955. As previously stated, the property has been vacant since 1982 and currently no structures exist on it.

The property northern boundary is at the center of Faye Drive. Across Faye Drive to the north is an Ohio Power substation. In general, the area to the north of Faye Drive is a mix of commercial/industrial operations such as mini storage space, and several residential properties. To the north northwest approximately 0.3 miles from the subject

property is Newark Concrete. To the west is an unpaved road and Conrail Railway, formerly owned by the Toledo and Ohio Central Railway Company. Across the rail tracks to the west is a trucking terminal, a small church, and Keller Drive which runs north to south and intersects Faye Drive. Bordering to the south are the Conrail and Baltimore and Ohio railroad tracks with the Baltimore and Ohio tracks continuing southwest of the property and the Conrail tracks to the south. Across the rail tracks to the south is a large refinery complex with a large tank farm consisting of Marathon and Ashland Pipeline LLP, Union Oil of California-76, and other support operations. To the southwest of the property approximately 0.3 miles, are CSX Transportation and Carpenter Oil Company. To the east and northeast are the Mark Landis landscaping property formerly owned by the Ohio Power Company (Ohio Power) and Ohio Power property, each contains a small structure. To the north-northeast are several residents along Coffman Road, Mid-Storage Warehouse and Quest International.

The information used to establish a continuous history of the subject property and its surroundings, included chain of title ownership, a deed, property survey map and legal description, tax records, USGS topographical maps, aerial photographs, Polk City Directory records, and interviews with former Dow employees.

Review of the environmental history of the site showed that hazardous substances and petroleum were historically handled at the site. The review also indicated that contaminants were present in shallow soil and the shallow perched groundwater at the site. The review did not indicate a potential for other nearby facilities that are not a part of the subject property to impact the groundwater at the subject property.

The previous environmental investigations conducted at or in the vicinity of the subject property led to the identification of the following four areas of concern:

1) **The Former Toluene Above Ground Storage Tank (AGST) Area**

A Toluene AGST (approximately 5,000 gallon capacity) with earthen dike existed near the northwest corner of the property. It stored toluene, which was used, as an enhancement fluid in oil and gas drilling activities. The toluene liquid included minute impurities such as xylene, ethylbenzene, and benzene.

No documentation is available to provide data on the exact composition of this fluid. The

AGST was removed in the late 70's. In addition, no releases have been documented. The constituents of concern (COCs) in this identified area are toluene, xylene, ethylbenzene and benzene. These constituents were detected in previous investigations performed by Dowell and Dow.

## 2) The Former Diesel Service Area

This area included a Diesel AGST, with a concrete block dike, a service shed and a diesel fuel pump. It is located in the south central portion of the property. Early Dowell operations included a disposal pit near the diesel tank area. The disposal pit was later covered with soil and a concrete pad was constructed above it as part of the Diesel Service Area. Investigations performed in December 1983, April 1984, and February 1986 identified several volatile organic compounds (VOCs) such as toluene, xylene, benzene and tetrachloroethene (PCE), and several semivolatile organic compounds (SVOCs) such as naphthalene in the soil.

The Former Diesel AGST Area was remediated in October 1986 with the excavation and off-site disposal of 36 cy of contaminated soil and debris. The former disposal pit area was remediated in June 1987. An area of approximately 50 ft. x 30 ft. was excavated to an approximate depth of 10-12 ft. Approximately 600 cy of contaminated soil were excavated and disposed off-site as non-hazardous.

Based on this information the COCs for this area are VOCs primarily BTEX, chlorinated hydrocarbons primarily cleaning solvents such as trichloroethene (TCE), PCE and degradation products, total hydrocarbon (TPH), SVOCs and RCRA metals.

## 3) The Former Gasoline USTs Area

Two gasoline USTs (1,500 gal. and 6,000 gal.) were used to store fuel for fueling vehicles used by Dowell at this area. This identified area is located on the west central portion of the property to the south of the Former Toluene AGST Area. Associated with the USTs were an interconnecting piping system and a gasoline pump island. No releases have been reported. Investigation was performed in this area in September 1985 and a

closure of the gasoline USTs took place in May 1986. COCs in this area are benzene, toluene, ethylbenzene, and xylene (BTEX), TPH, n-hexane and lead (originated from leaded fuel).

4) The Former Vehicle Parking and Wash Area

This area was used as parking and wash area and included an underground concrete tank which collected the wash solids. It is located in the southwest part of the property to the east of the Former Diesel Service Area. An investigation was performed in this area in November 1988 and closure of the underground concrete tank was performed following the investigation also in November 1988. COCs in this area are VOCs and metals.

The Amended Phase I Property Assessment concluded that an Amended Phase II Property Assessment should be conducted to determine potential impact to soil and/or groundwater from the historical operations at the property.

The Certified Professional determined that the property was eligible for entry into the Ohio VAP in February, 2000. The subject property or any portion thereof is not described by paragraphs (C)(1) through (C)(10) of the OAC Rule 3745-300-02. The Certified Professional inspected the property on June 2 and September 1, 1999 to verify findings prepared for inclusion in the Amended Phase I Property Assessment.

2.2 Amended Phase II Property Assessment

An Amended Phase II Property Assessment was conducted over the period of May 1999 to April 2000. An Amended Phase II Property Assessment Report was issued in April, 2000. The purpose of this assessment was to determine if soil and/or groundwater underneath the property were impacted by any of the four areas identified in the Phase I Property Assessment.

The Amended Phase II Assessment included sampling and analysis of soil and groundwater at the subject property, geologic, hydrogeologic and physical characteristics, a pathway completeness determination, compliance with applicable standards which included a detailed risk assessment and study limitations. A complete Amended Phase II Property Assessment Report is contained in the NFA Letter on file with the Ohio EPA. A summary of the Amended Phase II findings is provided below.

### **2.2.1 Soil Investigation and Findings**

Soil was investigated by placement of 25 soil bores and the collection of 26 soil samples. A total of 27 chemicals of concern were detected at the property. Findings of the soil investigation revealed the need for soil remediation in the Former Toluene AGST Area and the Former Diesel Service Area to ensure compliance with applicable Ohio EPA commercial/industrial land use in OAC 3745-300-08 and protecting groundwater from constituents in soil.

### **2.2.2 Groundwater Investigation and Findings**

Previous investigations revealed the presence of a shallow sand and gravel perched groundwater zone underneath the property at a depth of approximately 8-9 ft. below ground surface (bgs). A second sand and gravel saturated zone was discovered beneath the subject property during the 1999 investigation, with an unconfined water table at a depth of approximately 30 ft. bgs. A stiff clay layer, approximately 10 ft. thick, separates between the shallow perched groundwater and the second saturated zone. Groundwater classification and yield determination was performed for the shallow perched groundwater, using five existing shallow monitoring wells. A determination was made in accordance with OAC 3745-300-10 that the perched groundwater is Class B. Chemical data for the existing monitoring wells together with data from a new well installed in September 1999, revealed the presence of benzene above the Ohio EPA Generic Unrestricted Potable Use Standards, implying that the provisions for protecting groundwater meeting potable use standards do not apply to the Class B perched groundwater.

The lower saturated zone was assumed to be a "critical resource aquifer", according to the OAC 3745-300-10 definition of such an aquifer.

### **2.2.3 Exposure Pathway Assessment**

An exposure pathway assessment was prepared to evaluate potentially exposed human receptors, current and future, and identify potential exposure pathways associated with the property. This assessment was developed in accordance with guidance in the Ohio VAP (OAC 3745-300-09). The preferred land use designation for the property is

**EXECUTIVE SUMMARY FOR THE PROPERTY  
LOCATED AT 767 FAYE DRIVE  
HEATH, OHIO 43056**

---

commercial/industrial, as defined by OAC 3745-300-08(2)(C)(i). The following pathways were determined to be complete, and may or may not pose a risk to human health and/or the environment:

- Direct contact to soils – on property
- Subsurface soils inhalation – on property
- Soil vapor intrusion to subsurface structures – on property
- Construction worker scenario – on property
- Groundwater – potable use – on and off property
- Groundwater – non-potable use – on and off property
- Groundwater vapor intrusion to subsurface structures – on property
- Leaching of soil contaminants to groundwater

As discussed in Section 2.2.2 the shallow perched groundwater was classified as Class B. Results of the perched groundwater sampling indicated that benzene concentrations exceeded the Ohio EPA Generic Unrestricted Potable Use Standards implying that the provisions for protecting potable use standards do not apply to the Class B perched groundwater. However, these requirements apply to the lower saturated zone and the regional aquifer. The complete pathways at the property were analyzed to determine compliance with applicable standards.

#### **2.2.4 Determination of all Applicable Standards**

Review of chemical concentrations detected in the soil indicated that the concentrations of several VOCs exceeded generic direct contact standards for residential, commercial and industrial land use, as found in OAC 3745-300-08. In addition, these few VOCs in soil had the potential to impact the lower saturated zone and the regional aquifer. Therefore, implementation of a remedy was considered necessary.

Consideration of other exposure pathways was postponed until successful implementation of a remedy.

### **2.3 Remedial Action Planning and Implementation**

A Remedial Action Plan was developed based on findings of the soil and groundwater investigations. The overall objective was to attain compliance with applicable standards for commercial/industrial land use categories in accordance to OAC 3745-300-8. Preliminary multiple risk ratio calculations for direct contact soil were performed using the generic soil standards for commercial/industrial land use categories. In addition, preliminary soil and groundwater fate and transport (soil leaching to groundwater) were made. The calculations were made for several different scenarios to determine the extent of remediation necessary to achieve the applicable standards. Results of the calculations indicated the potential for impact on groundwater. This necessitates the implementation of the soil excavation remedy.

Remedial soil excavation was completed on December 23, 1999. A total of 1,500 tons (approximately 978 cy) were excavated from the Former Toluene AGST Area and 159 tons (approximately 107 cy) were excavated from the Former Diesel Service Area. The excavated soils were disposed off-site as non-hazardous special waste and the excavated area was restored with clean fill. Twenty-five post excavation soil samples were collected to confirm that cleanup goals were achieved. The post remediation data set was compiled for use in the determination of applicable standards.

### **2.4 Post Remediation Risk Assessment**

Following excavation and removal of contaminated soils, and compilation of a post-remedial data set for soils and groundwater, a post-remedial risk assessment was conducted.

#### **2.4.1 Exposure Pathway Assessment**

A pathway completeness analysis, using post-remedial data, determined the following pathways to be complete:

- Direct contact to soils – on property
- Subsurface soils inhalation – on property
- Soil vapor intrusion to subsurface structures – on property
- Construction worker scenario – on property

- Groundwater – potable use – on and off property
- Groundwater – non-potable use – on and off property
- Groundwater vapor intrusion to subsurface structures – on property
- Leaching of soil and perched groundwater contaminants to groundwater

#### **2.4.2 Determination of Risk from Soil Exposure Pathways**

Generic soil cleanup standards in OAC 3745-300-08 were used together with post remediation constituent concentrations in soil to derive cumulative ratios for direct contact soil for commercial/industrial land use. A direct contact standard was developed for pentachlorophenol because a generic direct contact standard or supplemental generic numeric value is not available. The Ohio EPA Generation of Alternative Generic Standard Excel Spreadsheet was used together with toxicity factors provided by the Ohio EPA. The cumulative ratios were used to calculate soil cleanup standards for multiple chemicals in accordance with OAC 3745-300-08.

The calculations and derivations showed that the highest post remediation constituents concentrations in soil were below the applicable multiple chemical direct contact standards for commercial/industrial land use categories. Results of this assessment showed that this pathway was satisfied by a wide margin. Hence, the deed of the subject property was restricted with a commercial and/or industrial land use restriction.

Total Petroleum Hydrocarbon (TPH) concentrations detected at the subject property were compared to appropriate direct contact standards found in OAC 3745-300-08 and OAC Rule 1301:7-9-13 Petroleum UST Corrective Action. Lead concentrations detected in soil were below the applicable standards in OAC 3745-300-08. Site concentrations for both chemicals were less than applicable chemicals.

Because this pathway was satisfied by a wide margin, the inhalation soil exposure pathway is also satisfied and not expected to cause adverse risk to receptors.

#### **2.4.3 Determination of Risk from Soil and Perched Groundwater Vapor Intrusion to Structures**

Calculations were made to assess the potential effect of vapor intrusion from volatile organic compounds in subsurface soil and the Class B perched groundwater. The Risk-

Based Corrective Action (RBCA) Tier 2 algorithms were used to assess potential risks from inhalation of intrusive vapors. RBCA methodology is accepted by Ohio EPA for these pathway exposures. The RBCA default parameters were used together with the highest detected soil and perched groundwater concentrations. Results of the calculations showed that even under the conservative assumptions made, the potential exposure for volatile organic compounds infiltrating into a warehouse or an office with a basement are below the acceptable exposure levels set by the Ohio EPA for commercial/industrial land use categories.

#### **2.4.4 Determination of Risks to Construction Worker/Utility Worker**

A construction worker/utility worker scenario was assessed to evaluate non-potable exposure to the Class B perched shallow groundwater and the subsurface soils. This assessment was done in two ways: the first using the Ohio EPA Risk Assessment Guidance methodologies and the second using the Risk-Based Corrective Action (RBCA) algorithms.

Results of calculations using both methodologies showed that a construction/utility worker who may be exposed to the subject property constituents of concern levels left after remediation are below the Ohio EPA acceptable levels even though conservative assumptions were made.

#### **2.4.5 Determination of Risk from Groundwater Exposure Pathways**

As discussed in Section 2.2.2 the provisions for protecting groundwater meeting potable standards do not apply to the perched groundwater underlying the property. To minimize exposure to this water, an institutional control in the form of a deed restriction was placed on the property to restrict the use of the Class B groundwater unit. Modeling describing potential horizontal and vertical migration of constituents of concern in the shallow soil and the Class B perched groundwater is described in the following section.

#### **2.4.6 Protection of Groundwater Meeting Unrestricted Potable Use Standards Leaching to Groundwater from Soils and the Perched Groundwater Pathways**

Extensive soil and groundwater fate and transport modeling was performed for the subject property. The modeling that was conducted is inherently conservative. This conservatism was built in by design to account for worst-case scenarios. The subject property appears to be protective of human health, safety, and the environment.

It has been demonstrated that the chemicals of concern in the unsaturated zone will leach to the shallow Class B groundwater zone, but will not migrate laterally to downgradient property receptors in excess of VAP standards. Furthermore, the modeling of chemicals of concern with respect to their potential to leach to the underlying regional aquifer has been conducted. Results showed that the regional aquifer will not be impacted in excess of VAP unrestricted potable use standards by leaching of chemicals of concern from the shallow Class B groundwater.

### **3.0 CONCLUSION**

The foregoing is a summary of the NFA Letter submitted for The Dow Chemical Company by Atul Pandey, P.E. of Smalley & Associates, Inc., as Certified Professional (CP#224).

Mr. Pandey is the contact at Smalley & Associates, Inc. regarding questions of this NFA Letter. Mr. Pandey can be contacted at 740-654-0122.

A complete copy of the NFA Letter is on file with the Ohio EPA, Division of Emergency and Remedial Response, Voluntary Action Program. The NFA Letter will be made available by the Agency upon request. The number for the Ohio EPA, Division of Emergency and Remedial Response, Voluntary Action Program is 614-644-2924.

ATTACHMENT A

Situated in Lot 3 in the 2<sup>nd</sup> Quarter of Township 1 North, Range 12 West of the United States Military Lands, City of Heath, Licking County, Ohio (and being all of the property conveyed to Dowell Incorporated by a deed recorded in Deed Book 475, page 283, all of the property conveyed to The Dow Chemical Company by a deed recorded in Deed Book 595, page 648 and all of the property conveyed to The Dow Chemical Corporation by a deed recorded in Deed Book 596, page 103) and being further bounded and described as follows:

Beginning for a point of reference at the intersection of the center of Faye Drive and the center of the Conrail Corporation railroad and being on the corporation line separating the City of Heath and the City of Newark;

thence South 89° 58' 35" East, along the center of Faye Drive and along the corporation line separating the City of Heath and the City of Newark, a distance of 40.30 feet to a point, being the true place of beginning of this tract;

thence continuing South 89° 58' 35" East, along the center of Faye Drive and along the corporation line separating the City of Heath and the City of Newark, a distance of 317.05 feet to a 5/8 inch rebar found;

thence South 02° 25' 45" West, along the West line of a tract conveyed to Mark D. Landis by a deed recorded in Official Record Book 39, page 180 and passing a 5/8 inch rebar found on the South right of way line of Faye Drive at 20.02 feet, a total distance of 177.60 feet to a 5/8 inch rebar found;

thence North 82° 21' 00" East, continuing along said Landis tract, a distance of 92.81 feet to a 5/8 inch rebar found;

thence South 02° 20' 20" West, continuing along said Landis tract, a distance of 19.23 feet to an iron pin set on the North right of way line of the B. & O. and Penn Central railroad;

thence South 64° 47' 00" West, along the North line of said B. & O. and Penn Central railroad, a distance of 521.60 feet to a 5/8 inch rebar found;

thence North 07° 09' 00" East, along the East right of way line of the aforementioned Conrail Corporation railroad, a distance of 104.20 feet to an iron pin set;

thence South 82° 51' 00" East, along a tract originally conveyed to The Toledo and Ohio Central Railway Company by a deed recorded in Deed Book 283, page 333 and now owned by the aforementioned Conrail Corporation railroad, a distance of 20.00 feet to an iron pin set;

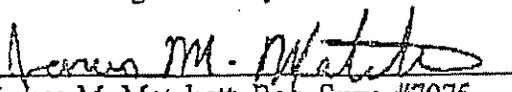
thence North 07° 09' 00" East, continuing along said Conrail Corporation tract and passing an iron pin set on the South right of way line of Faye Drive at 288.10 feet, a total distance of 308.15 feet to the place of beginning.

POOR COPY

Containing 2.4787 acres, subject to all legal road right of way and any valid and existing easements, leases, restrictions or other conditions of record.

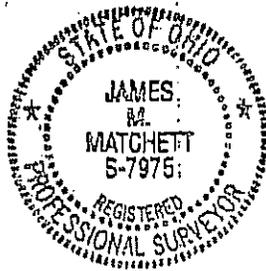
The bearings used in this description are based on the centerline of the B. & O. and Penn Central Railroad having a bearing of South 64° 47' 00" West as described in a deed recorded in Deed Book 475, page 283. Pertinent documents are all deeds mentioned, tax maps, and a previous survey plat prepared by Harold W. Hitchens, Jr., Reg. Surv. #6751, for Dow Chemical during January of 1985. All iron pins described as set are 5/8 inch diameter, 30 inches long, solid reinforcing bars with plastic identification caps.

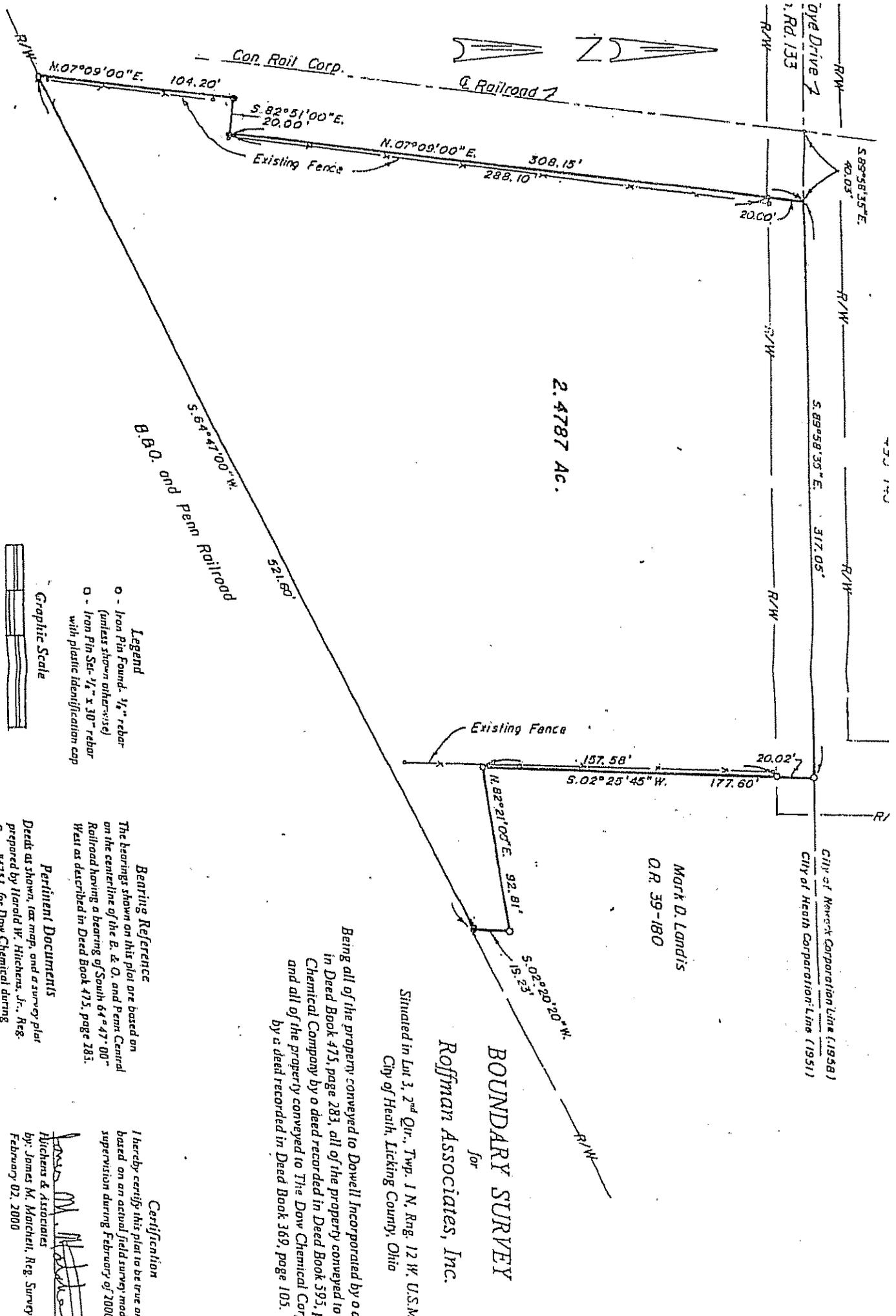
This description was prepared by James M. Matchett, Reg. Surv. #7975, from a survey made by same during February of 2000.

  
James M. Matchett, Reg. Surv. #7975  
September 26, 2000

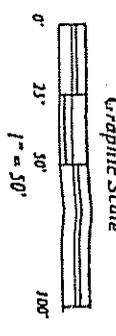
Job. #1816-01-00

RND





2.4787 Ac.



- Legend**
- - Iron Pin Found - 1/8" rebar (unless shown otherwise)
  - - Iron Pin Set - 1/2" x 3/8" rebar with plastic identification cap

**Bearing Reference**  
 The bearings shown on this plot are based on the centerline of the B. & O. and Penn Central Railroad having a bearing of South 64° 47' 00" West as described in Deed Book 475, page 283.

**Pertinent Documents**  
 Deeds as shown, tax map, and a survey plot prepared by Harold W. Hitchens, Jr., Reg. Surv. #67511, for Dow Chemical during January of 1985.

Being all of the property conveyed to Dowell Incorporated by a deed in Deed Book 475, page 283, all of the property conveyed to The Chemical Company by a deed recorded in Deed Book 595, page 105, and all of the property conveyed to The Dow Chemical Company by a deed recorded in Deed Book 369, page 105.

**BOUNDARY SURVEY**  
 for  
**Roffman Associates, Inc.**

Situated in Lot 3, 2<sup>nd</sup> Qtr., Twp. 1 N, Rng. 12 W, U.S.M. 1  
 City of Health, Licking County, Ohio

**Certification**  
 I hereby certify this plot to be true and based on an actual field survey made under my supervision during February of 2000.

*James M. Marshall*  
 James M. Marshall, Reg. Surveyor  
 February 02, 2000  
 Job #1816-01-00

The Former Dowell Inc. Property  
Director's Final Findings and Orders / Covenant Not to Sue

**Exhibit 4**  
**Corrective Declaration of Use Restrictions**  
**(Recorded October 3, 2000)**  
**and**  
**Declaration of Use Restrictions**  
**(Recorded June 26, 2000)**

CORRECTIVE  
Declaration of Use Restrictions

This Declaration of Use Restrictions is made by The Dow Chemical Company.

Whereas, The Dow Chemical Company ("Dow") is the owner of a tract of real property consisting of 2.4877 acres located in Licking County, Ohio, and such real property is more particularly described in Exhibit A attached and incorporated by reference into this Declaration of Use Restrictions (the "Property").

Now therefore, in consideration of the foregoing statements, Dow, for itself, and its successors and assigns in ownership of the Property, hereby declares that the Property is and shall hereafter be owned, used, held, transferred, sold, conveyed, encumbered, leased, improved and occupied subject to the restrictions hereinafter set forth in this Declaration of Use Restrictions.

1. **Land Use Restrictions.** As a portion of the remedy under the Ohio Environmental Protection Agency ("Ohio EPA") Voluntary Action Program ("VAP"), to protect against exposure to hazardous substances and/or petroleum on the Property, the Property shall be made subject to the following restrictions and covenants (collectively, the "Restrictions") a) the uppermost Class B groundwater underlying the Property shall not be used except for the purposes of environmental investigation and remediation, (b) the Property shall be restricted to commercial and/or industrial uses only, as set forth in Ohio Administrative Code ("OAC") 3745-300-08(B)(2)(c)(ii) and 3745-300-08(B)(2)(c)(iii), as effective December 16, 1996). The commercial and industrial land uses are defined in this rule as follows:

(i) Commercial land use category

Commercial land use is land use with potential exposure of adult workers during a business day and potential exposures of adults and children who are customers, patrons, or visitors to such facilities. Commercial land use includes potential exposures of adults to dermal contact with soil, inhalation of vapors and particles from soil, and ingestion of soil. Exposures to soil on the property must be short and infrequent. The current or intended use of the property includes, but is not limited to, facilities which supply goods or services and are open to the public. Examples of commercial land uses include, but are not limited to: warehouses, building supply facilities, retail gasoline stations, automobile service stations, automobile dealerships, retail warehouses, repair and service establishments for appliances and other goods, professional offices, banks and credit unions, office buildings, retail businesses selling food or merchandise, hospitals and clinics, religious institutions, hotels, motels, personal service establishments, and parking facilities.

(ii) Industrial land use category

Industrial land use is land use with exposure of adult workers during a business day. Industrial land use must reliably exclude general public and children from access to the

TRANSFER NOT NECESSARY  
Date October 3 2000  
[Signature]  
Licking County Auditor

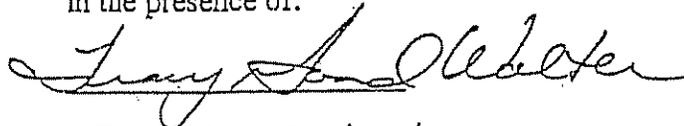
facility. Industrial land use involves potential exposure of adults to dermal contact with soil, inhalation of vapors and particles from soil, and ingestion of soil. The current or intended use for the property includes, but is not limited to, transportation or the manufacture and assembly of goods such as parts, machines or chemicals. Examples of industrial land uses include, but are not limited to: lumber yards, power plants, manufacturing facilities such as metal working shops, plating shops, blast furnaces, coke plants, oil refineries, brick factories, chemical plants, and plastic plants, assembly plants, non-public airport areas, limited access highways, railroad switching yards, and marine port facilities.

2. **Use Restrictions to be Binding and Run With The Land.** Pursuant to Ohio Revised Code (“ORC”) 3746.14 this Declaration of Use Restrictions shall run with the land and shall be binding upon all current owners of the Property, and all successors and assigns, of the Property, or any portion of the Property, including any leasehold interests on the Property.
3. **Enforcement.** Compliance with this Declaration of Use Restrictions may be enforced by a legal or equitable action brought in a court of competent jurisdiction by one or more of the following parties: (i) any party referenced in Paragraph One (1) and Two (2) of this Declaration of Use Restrictions, (ii) Ohio EPA or its representatives, or (iii) any party with legal standing under applicable law. Any delay or failure on the part of any such party to take any action to enforce compliance with this Declaration of Use Restrictions shall not bar any subsequent enforcement with respect to the noncompliance in question, and shall not be deemed a waiver of the right of any party to take action to enforce any noncompliance.
4. **Noncomplying Use:** Pursuant to Ohio Revised Code (“ORC”) 3746.05, if the Property or any portion of the Property is put to a use that does not comply with this Declaration of Use Restrictions, any Covenant Not to Sue issued for the Property by Ohio EPA under ORC 3746.12 is void on and after the date of the commencement of the noncomplying use.
5. **Recording:** This Declaration of Use Restrictions shall be recorded in the same manner as a deed in the Office of the Recorder of Licking County, pursuant to ORC 3746.10(C) and 317.08(A), and shall be deemed incorporated by reference in any instrument hereafter conveying any interests in the Property or any portion of the Property.
6. **Notice of Use Restrictions Upon Conveyance:** Any instrument hereafter conveying any interest in the Property or any portion of the Property shall contain a recital acknowledging the Declaration of Use Restrictions and providing the recording location of the Declaration of Use Restrictions upon such conveyance substantially in the following form: “The real property described herein is subject to the 'Declaration of Use Restrictions' made by The Dow Chemical Company, dated 23 June, 2000, and filed for record with the Office of the Recorder of Licking County, Ohio on June 26, 2000 in the Licking County Deed Records, under Instrument Number 200006260020324 as if the same were fully set forth herein”.

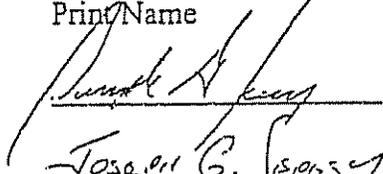
7. **Miscellaneous.** If any one or more provisions of this Declaration of Use Restrictions is found unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired. This Declaration of Use Restrictions shall be governed by and interpreted in accordance with the laws of the State of Ohio, including ORC Chapter 3746. and OAC Chapter 3745-300. All headings used herein are for convenience and shall not be used to interpret or qualify the terms of this Declaration of Use Restrictions.

The Dow Chemical Company has executed this Declaration of Use Restrictions, by its duly authorized representative, Benny F. Baker on 23 June 2000.

Signed and Acknowledged  
in the presence of:



Tracy Good Walter  
Print Name



Joseph B. Jensen  
Print Name

State of Michigan  
County of Midland

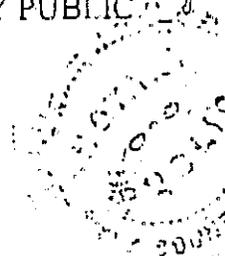
The Dow Chemical Company

Bv: 

Remediation Leader

The foregoing instrument was acknowledged before me on 23 June 2000, Benny F. Baker, Remediation Leader, The Dow Chemical Company, for and on behalf of the said corporation.

  
NOTARY PUBLIC



This Corrective Declaration of Use Restrictions is being executed for the purposes of attaching a corrected legal description as Exhibit A, which changes a deed reference from "Deed Book 369, Page 105" to "Deed Book 596, Page 103" and of inserting recording information in paragraph 6.

In all other respects the Declaration of Use Restrictions is ratified and confirmed.

The Dow Chemical Company has executed this Corrective Declaration of Use Restrictions, by its duly authorized representative, Benny F. Baker, on October 02, 2000.

Signed and Acknowledged  
in the presence of:

Elaine A. Schultz

Elaine A. Schultz  
Print Name

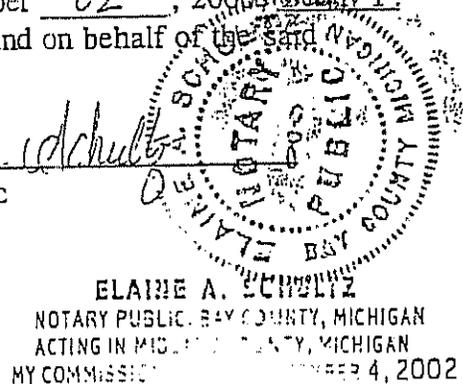
Carol E. Taylor

Carol E. Taylor  
Print Name

State of Michigan  
County of Midland

The foregoing instrument was acknowledged before me on October 02, 2000, by Benny F. Baker, Remediation Leader, The Dow Chemical Company, for and on behalf of the said corporation.

Elaine A. Schultz  
Notary Public



This instrument prepared by  
Robert N. Drake  
Reese, Pyle, Drake & Meyer, P.L.L.  
36 N. Second Street  
P.O. Box 919, Newark, Ohio 43058-0919  
(740) 345-3431

Situated in Lot 3 in the 2<sup>nd</sup> Quarter of Township 1 North, Range 12 West of the United States Military Lands, City of Heath, Licking County, Ohio (and being all of the property conveyed to Dowell Incorporated by a deed recorded in Deed Book 475, page 283, all of the property conveyed to The Dow Chemical Company by a deed recorded in Deed Book 595, page 648 and all of the property conveyed to The Dow Chemical Corporation by a deed recorded in Deed Book 596, page 103) and being further bounded and described as follows:

Beginning for a point of reference at the intersection of the center of Faye Drive and the center of the Conrail Corporation railroad and being on the corporation line separating the City of Heath and the City of Newark;

thence South 89° 58' 35" East, along the center of Faye Drive and along the corporation line separating the City of Heath and the City of Newark, a distance of 40.30 feet to a point, being the true place of beginning of this tract;

thence continuing South 89° 58' 35" East, along the center of Faye Drive and along the corporation line separating the City of Heath and the City of Newark, a distance of 317.05 feet to a 5/8 inch rebar found;

thence South 02° 25' 45" West, along the West line of a tract conveyed to Mark D. Landis by a deed recorded in Official Record Book 39, page 180 and passing a 5/8 inch rebar found on the South right of way line of Faye Drive at 20.02 feet, a total distance of 177.60 feet to a 5/8 inch rebar found;

thence North 82° 21' 00" East, continuing along said Landis tract, a distance of 92.81 feet to a 5/8 inch rebar found;

thence South 02° 20' 20" West, continuing along said Landis tract, a distance of 19.23 feet to an iron pin set on the North right of way line of the B. & O. and Penn Central railroad;

thence South 64° 47' 00" West, along the North line of said B. & O. and Penn Central railroad, a distance of 521.60 feet to a 5/8 inch rebar found;

thence North 07° 09' 00" East, along the East right of way line of the aforementioned Conrail Corporation railroad, a distance of 104.20 feet to an iron pin set;

thence South 82° 51' 00" East, along a tract originally conveyed to The Toledo and Ohio Central Railway Company by a deed recorded in Deed Book 283, page 333 and now owned by the aforementioned Conrail Corporation railroad, a distance of 20.00 feet to an iron pin set;

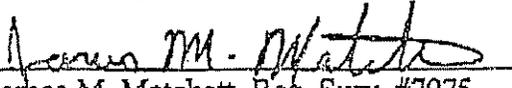
thence North 07° 09' 00" East, continuing along said Conrail Corporation tract and passing an iron pin set on the South right of way line of Faye Drive at 288.10 feet, a total distance of 308.15 feet to the place of beginning.

DOOR COPY

Containing 2.4787 acres, subject to all legal road right of way and any valid and existing easements, leases, restrictions or other conditions of record.

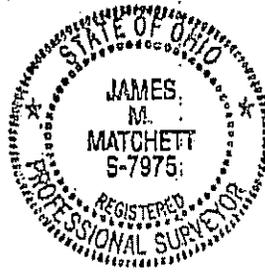
The bearings used in this description are based on the centerline of the B. & O. and Penn Central Railroad having a bearing of South 64° 47' 00" West as described in a deed recorded in Deed Book 475, page 283. Pertinent documents are all deeds mentioned, tax maps, and a previous survey plat prepared by Harold W. Hitchens, Jr., Reg. Surv. #6751, for Dow Chemical during January of 1985. All iron pins described as set are 5/8 inch diameter, 30 inches long, solid reinforcing bars with plastic identification caps.

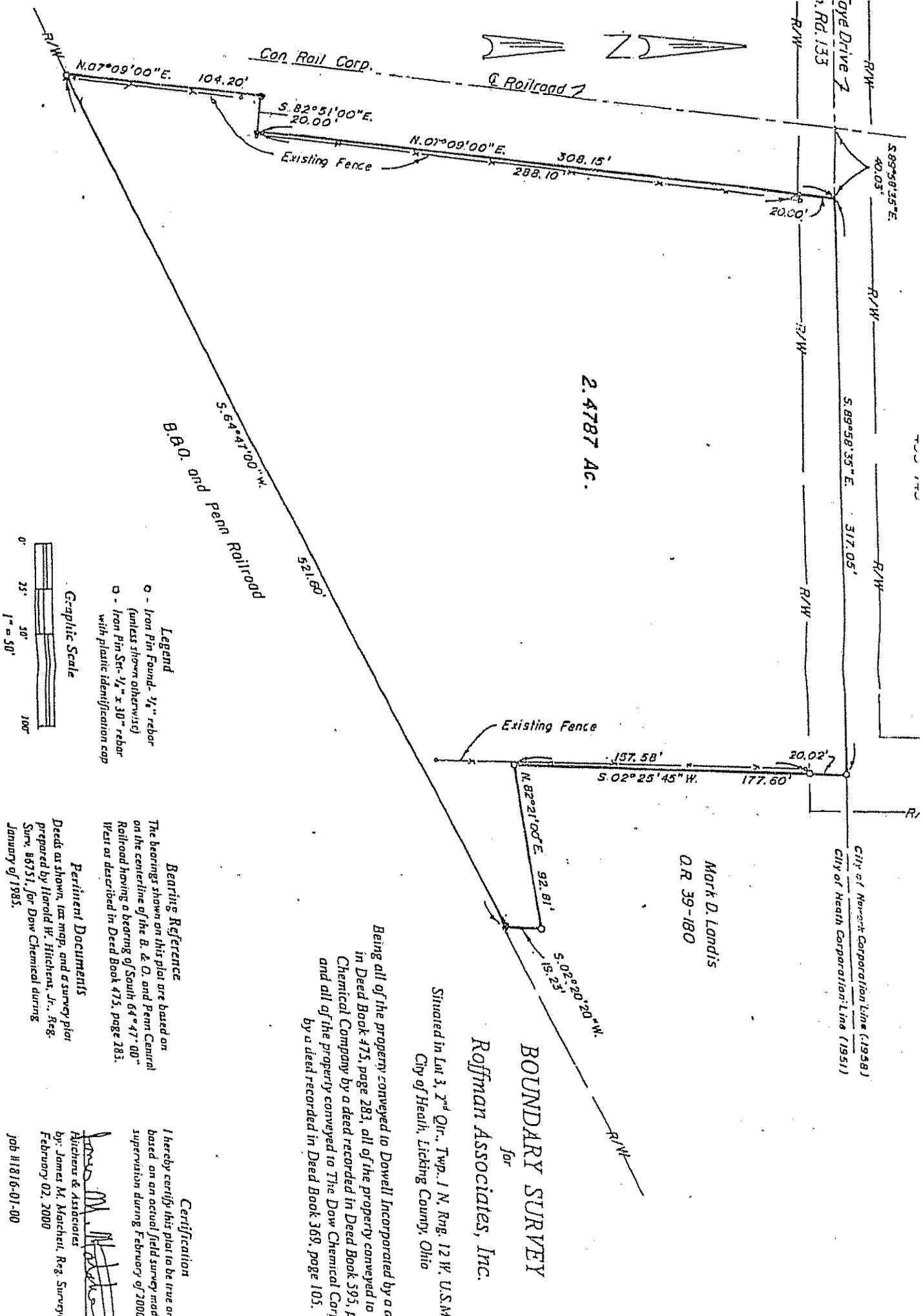
This description was prepared by James M. Matchett, Reg. Surv. #7975, from a survey made by same during February of 2000.

  
James M. Matchett, Reg. Surv. #7975  
September 26, 2000

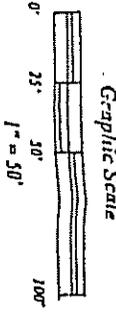
Job. #1816-01-00

RND





2.4787 Ac.



- Legend**
- - Iron Pin Found - 1/2" rebar (unless shown otherwise)
  - - Iron Pin Set - 1/2" x 30" rebar with plastic identification cap

**Bearing Reference**  
 The bearings shown on this plat are based on the centerline of the B. & O. and Penn Central Railroad having a bearing of South  $64^{\circ}41'00''$  West as described in Deed Book 475, page 285.

**Pertinent Documents**  
 Deeds as shown, tax map, and a survey plat prepared by Harold W. Hitchens, Jr., Reg. Surv. #6751, for Dow Chemical during January of 1985.

Being all of the property conveyed to Dowell Incorporated by a deed in Deed Book 475, page 283, all of the property conveyed to The Chemical Company by a deed recorded in Deed Book 595, page 105, and all of the property conveyed to The Dow Chemical Company by a deed recorded in Deed Book 369, page 105.

Situated in Lot 3, 2<sup>nd</sup> Qtr., Twp. 1 N, Rng. 12 W, U.S.M.L. City of Heath, Licking County, Ohio

**BOUNDARY SURVEY**  
 for  
**Roffman Associates, Inc.**

**Certification**  
 I hereby certify this plat to be true and based on an actual field survey made in supervision during February of 2000.

Hitchens & Associates  
 by: James M. Hanchett, Reg. Surveyor  
 February 02, 2000  
 Job H1816-01-00

## Declaration of Use Restrictions

This Declaration of Use Restrictions is made by The Dow Chemical Company.

Whereas, The Dow Chemical Company ("Dow") is the owner of a tract of real property consisting of 2.4877 acres located in Licking County, Ohio, and such real property is more particularly described in Exhibit A attached and incorporated by reference into this Declaration of Use Restrictions (the "Property").

Now therefore, in consideration of the foregoing statements, Dow, for itself, and its successors and assigns in ownership of the Property, hereby declares that the Property is and shall hereafter be owned, used, held, transferred, sold, conveyed, encumbered, leased, improved and occupied subject to the restrictions hereinafter set forth in this Declaration of Use Restrictions.

1. **Land Use Restrictions.** As a portion of the remedy under the Ohio Environmental Protection Agency ("Ohio EPA") Voluntary Action Program ("VAP"), to protect against exposure to hazardous substances and/or petroleum on the Property, the Property shall be made subject to the following restrictions and covenants (collectively, the "Restrictions") a) the uppermost Class B groundwater underlying the Property shall not be used except for the purposes of environmental investigation and remediation, (b) the Property shall be restricted to commercial and/or industrial uses only, as set forth in Ohio Administrative Code ("OAC") 3745-300-08(B)(2)(c)(ii) and 3745-300-08(B)(2)(c)(iii), as effective December 16, 1996.

The commercial and industrial land uses are defined in this rule as follows:

(i) Commercial land use category

Commercial land use is land use with potential exposure of adult workers during a business day and potential exposures of adults and children who are customers, patrons, or visitors to such facilities. Commercial land use includes potential exposures of adults to dermal contact with soil, inhalation of vapors and particles from soil, and ingestion of soil. Exposures to soil on the property must be short and infrequent. The current or intended use of the property includes, but is not limited to, facilities which supply goods or services and are open to the public. Examples of commercial land uses include, but are not limited to: warehouses, building supply facilities, retail gasoline stations, automobile service stations, automobile dealerships, retail warehouses, repair and service establishments for appliances and other goods, professional offices, banks and credit unions, office buildings, retail businesses selling food or merchandise, hospitals and clinics, religious institutions, hotels, motels, personal service establishments, and parking facilities.

(ii) Industrial land use category

Industrial land use is land use with exposure of adult workers during a business day. Industrial land use must reliably exclude general public and children from access to the

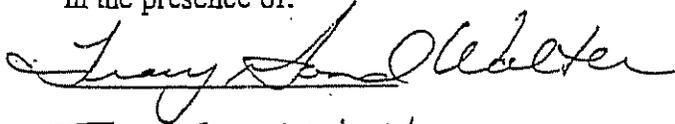
facility. Industrial land use involves potential exposure of adults to dermal contact with soil, inhalation of vapors and particles from soil, and ingestion of soil. The current or intended use for the property includes, but is not limited to, transportation or the manufacture and assembly of goods such as parts, machines or chemicals. Examples of industrial land uses include, but are not limited to: lumber yards, power plants, manufacturing facilities such as metal working shops, plating shops, blast furnaces, coke plants, oil refineries, brick factories, chemical plants, and plastic plants, assembly plants, non-public airport areas, limited access highways, railroad switching yards, and marine port facilities.

2. **Use Restrictions to be Binding and Run With The Land.** Pursuant to Ohio Revised Code ("ORC") 3746.14 this Declaration of Use Restrictions shall run with the land and shall be binding upon all current owners of the Property, and all successors and assigns, of the Property, or any portion of the Property, including any leasehold interests on the Property.
3. **Enforcement.** Compliance with this Declaration of Use Restrictions may be enforced by a legal or equitable action brought in a court of competent jurisdiction by one or more of the following parties: (i) any party referenced in Paragraph One (1) and Two (2) of this Declaration of Use Restrictions, (ii) Ohio EPA or its representatives, or (iii) any party with legal standing under applicable law. Any delay or failure on the part of any such party to take any action to enforce compliance with this Declaration of Use Restrictions shall not bar any subsequent enforcement with respect to the noncompliance in question, and shall not be deemed a waiver of the right of any party to take action to enforce any noncompliance.
4. **Noncomplying Use:** Pursuant to Ohio Revised Code ("ORC") 3746.05, if the Property or any portion of the Property is put to a use that does not comply with this Declaration of Use Restrictions, any Covenant Not to Sue issued for the Property by Ohio EPA under ORC 3746.12 is void on and after the date of the commencement of the noncomplying use.
5. **Recording:** This Declaration of Use Restrictions shall be recorded in the same manner as a deed in the Office of the Recorder of Licking County, pursuant to ORC 3746.10(C) and 317.08(A), and shall be deemed incorporated by reference in any instrument hereafter conveying any interests in the Property or any portion of the Property.
6. **Notice of Use Restrictions Upon Conveyance:** Any instrument hereafter conveying any interest in the Property or any portion of the Property shall contain a recital acknowledging the Declaration of Use Restrictions and providing the recording location of the Declaration of Use Restrictions upon such conveyance substantially in the following form: "The real property described herein is subject to the 'Declaration of Use Restrictions' made by The Dow Chemical Company, dated 23 June, 2000, and filed for record with the Office of the Recorder of Licking County, Ohio on June 26, 2000 in the Licking County Deed Records, under Instrument Number 20 0006260 020324 as if the same were fully set forth herein".

7. **Miscellaneous.** If any one or more provisions of this Declaration of Use Restrictions is found unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired. This Declaration of Use Restrictions shall be governed by and interpreted in accordance with the laws of the State of Ohio, including ORC Chapter 3746. and OAC Chapter 3745-300. All headings used herein are for convenience and shall not be used to interpret or qualify the terms of this Declaration of Use Restrictions.

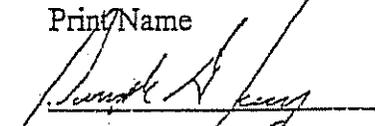
The Dow Chemical Company has executed this Declaration of Use Restrictions, by its duly authorized representative, Benny F. Baker on 23 June 2000.

Signed and Acknowledged  
in the presence of:



Tracy Good Walter

Print Name



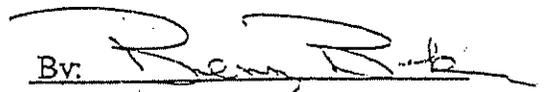
Donald A. Jones

Print Name

State of Michigan  
County of Midland

The foregoing instrument was acknowledged before me on 23 June 2000, Benny F. Baker,  
Remediation Leader, The Dow Chemical Company, for and on behalf of the said corporation.

The Dow Chemical Company

By: 

Remediation Leader

  
NOTARY PUBLIC



This instrument prepared by:

The Dow Chemical Company  
2030 Dow Center  
Midland, MI 48674

Situated in Lot 3 in the 2<sup>nd</sup> Quarter of Township 1 North, Range 12 West of the United States Military Lands, City of Heath, Licking County, Ohio (and being all of the property conveyed to Dowell Incorporated by a deed recorded in Deed Book 475, page 283, all of the property conveyed to The Dow Chemical Company by a deed recorded in Deed Book 595, page 648 and all of the property conveyed to The Dow Chemical Corporation by a deed recorded in Deed Book 369, page 105) and being further bounded and described as follows:

Beginning for a point of reference at the intersection of the center of Faye Drive and the center of the Conrail Corporation railroad and being on the corporation line separating the City of Heath and the City of Newark;

thence South 89° 58' 35" East, along the center of Faye Drive and along the corporation line separating the City of Heath and the City of Newark, a distance of 40.30 feet to a point, being the true place of beginning of this tract;

thence continuing South 89° 58' 35" East, along the center of Faye Drive and along the corporation line separating the City of Heath and the City of Newark, a distance of 317.05 feet to a 5/8 inch rebar found;

thence South 02° 25' 45" West, along the West line of a tract conveyed to Mark D. Landis by a deed recorded in Official Record Book 39, page 180 and passing a 5/8 inch rebar found on the South right of way line of Faye Drive at 20.02 feet, a total distance of 177.60 feet to a 5/8 inch rebar found;

thence North 82° 21' 00" East, continuing along said Landis tract, a distance of 92.81 feet to a 5/8 inch rebar found;

thence South 02° 20' 20" West, continuing along said Landis tract, a distance of 19.23 feet to an iron pin set on the North right of way line of the B. & O. and Penn Central railroad;

thence South 64° 47' 00" West, along the North line of said B. & O. and Penn Central railroad, a distance of 521.60 feet to a 5/8 inch rebar found;

thence North 07° 09' 00" East, along the East right of way line of the aforementioned Conrail Corporation railroad, a distance of 104.20 feet to an iron pin set;

thence South 82° 51' 00" East, along a tract originally conveyed to The Toledo and Ohio Central Railway Company by a deed recorded in Deed Book 283, page 333 and now owned by the aforementioned Conrail Corporation railroad, a distance of 20.00 feet to an iron pin set;

thence North 07° 09' 00" East, continuing along said Conrail Corporation tract and passing an iron pin set on the South right of way line of Faye Drive at 288.10 feet, a total distance of 308.15 feet to the place of beginning.

Containing 2.4787 acres, subject to all legal road right of way and any valid and existing easements, leases, restrictions or other conditions of record.

The bearings used in this description are based on the centerline of the B. & O. and Penn Central Railroad having a bearing of South 64° 47' 00" West as described in a deed recorded in Deed Book 475, page 283. Pertinent documents are all deeds mentioned, tax maps, and a previous survey plat prepared by Harold W. Hitchens, Jr., Reg. Surv. #6751, for Dow Chemical during January of 1985. All iron pins described as set are 5/8 inch diameter, 30 inches long, solid reinforcing bars with plastic identification caps.

This description was prepared by James M. Matchett, Reg. Surv. #7975, from a survey made by same during February of 2000.

*James M. Matchett*

James M. Matchett, Reg. Surv. #7975  
February 02, 2000

job #1816-01-00

