

BEFORE THE  
OHIO ENVIRONMENTAL PROTECTION AGENCY

OHIO E.P.A.  
DEC 29 1999

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In The Matter of:

Pizzuti Properties/Miranova Limited  
250 East Broad Street  
Columbus, Ohio 43215

Covenant Not to Sue

Director's Final Findings  
and Orders

Regarding property known as

Miranova (Residential Portion)  
270 West Mound Street  
Columbus, Ohio 43215

Pursuant to Ohio Revised Code ("ORC") Chapter 3746 and Ohio Administrative Code ("OAC") Chapter 3745-300, the Director of the Ohio Environmental Protection Agency ("Director") hereby makes the following Findings and issues the following Orders, including a Covenant Not to Sue.

FINDINGS

1. An original No Further Action Letter, No. 99NFA066 (the "NFA Letter"), was submitted on July 30, 1999 to Ohio EPA's Division of Emergency and Remedial Response, Voluntary Action Program ("VAP") on behalf of Pizzuti Properties/Miranova Limited (the "Volunteer"), by Craig A. Kasper, a certified professional, No. CP103, as defined in ORC Section 3746.01(E) and OAC Rule 3745-300-01(A)(8) (the "Certified Professional").
2. The NFA Letter describes investigational and remedial activities undertaken at the approximately 2.273 acre property currently known as Miranova (residential portion), located at 270 West Mound Street, Columbus, Ohio, Franklin county, (the "Property"). An exact legal description of the Property is attached hereto as Exhibit 1, Document numbers 199806220153940 and 199711250304330, located in the Franklin County Recorder's Office. A site location map is attached hereto as Exhibit 2. The current owner of the Property is Pizzuti Properties/Miranova Limited.

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

By: Onyiah Jackson DATE 12-29-99

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3. An addendum to the NFA Letter, dated December 17, 1999, was submitted to Ohio EPA by the Certified Professional. The NFA Letter, the addendum thereto, and Ohio EPA's comments regarding the NFA Letter and the addendum, are collectively referred to herein as the "NFA."
  
4. Based upon the information contained in the NFA, the following investigational and remedial activities were or will be undertaken and completed regarding the Property:
  - a. a Phase I Property Assessment, in accordance with OAC Rule 3745-300-06, to determine whether there is any reason to believe that any release of hazardous substances or petroleum has or may have occurred at or emanated from the Property;
  - b. a Phase II Property Assessment, in accordance with OAC Rule 3745-300-07, including but not limited to investigations of soil and ground water to assess environmental conditions related to any release of hazardous substances and petroleum;
  - c. a Property-specific risk assessment in accordance with OAC Rule 3745-300-09;
  - d. remedial activities conducted concurrently with construction activities for redevelopment of the Property for residential use, in accordance with OAC Chapter 3745-300. Construction activities included excavating basements for two buildings and using the excavated soils to regrade the Property. Prior to excavation of the soil, the soil was characterized to determine if the applicable standards for the Property were met. Based on the characterization, soil meeting residential applicable standards were to be distributed on the portion of the Property for residential use;
  - e. implementation of an Operation and Maintenance ("O&M") Agreement for the Property, for the engineering controls and institutional controls to assure completion of all construction, maintenance, monitoring, reporting, record keeping, financial assurance and other requirements, as set forth in the O&M Agreement, including but not limited to the following:
    - i. the use of an institutional control for the Property that is not contained on the Property deed, including a restriction on the use of ground water underlying the Property for all purposes, including potable and non-potable purposes, except environmental sampling

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and monitoring at all points underlying the Property, as set forth in the O&M Agreement; and

- ii. the use of a fence as an engineering control on the Property, on the areas delineated in, and for the period of time addressed by, the interim plan, as set forth in the O&M Agreement;
  - iii. the use of building foundation engineering controls on the Property, on the areas delineated in, and for the period of time addressed by, the final plan, as set forth in the O&M Agreement;
  - iv. the use of a swimming pool foundation engineering control on the Property, on the areas delineated in, and for the period of time addressed by, the final plan as set forth in the O&M Agreement; and
  - v. the use of a soil cover engineering control on the Property, on the areas delineated in, and for the period of time addressed by, the final plan, as set forth in the O&M Agreement.
5. The Certified Professional has verified by affidavit that the investigational and remedial activities undertaken at the Property comply with the 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.
6. The laboratories, Aqua Tech Environmental Laboratories, located at 6878 State Route 100, P.O. Box 7, Melmore OH 44845-9999; Aqua Tech Environmental Laboratories, located at 1776 Marion-Waldo Road, Marion OH 43302; and Quanterra Incorporated, located at 4101 Shuffel Drive Northwest, North Canton OH 44720 (collectively, the "Certified Laboratories"); performed the analyses supporting the NFA for the Property. The Certified Laboratories were certified pursuant to ORC Section 3746.01(D) and OAC Rule 3745-300-01(A)(7) as certified laboratories Nos. CL0009, CL0017, and CL0024, respectively, at the time the analyses supporting the NFA were performed.
7. According to information provided by the Certified Laboratories in affidavits contained in the NFA, the Certified Laboratories performed analyses for which they were certified and qualified, pursuant to ORC Chapter 3746 and OAC

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Chapter 3745-300, that formed the basis for the issuance of the NFA by the Certified Professional.

8. On DEC 29 1999, Ohio EPA and Pizzuti Properties/Miranova Limited entered into an O&M Agreement, which is incorporated by reference as if fully written into these Findings and Orders. The O&M Agreement includes and incorporates by reference an approved O&M Plan.
9. Based on the information contained in the NFA, and upon the implementation of the O&M Agreement and all other conditions set forth herein, the Property meets, or will meet upon completion of the remedy implemented under the Interim Plan of the O&M Agreement, the applicable standards contained in ORC Chapter 3746 and OAC Chapter 3745-300 for restricted residential land use, including but not limited to:
  - a. Residential land use category direct contact soil standards for hazardous substances in accordance with Tables I, V and VI of OAC Rule 3745-300-08 for generic numerical standards, and in accordance with OAC Rule 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 2.5 feet;
  - b. Residential land use category direct contact soil standards for petroleum in accordance with OAC Rule 3745-300-08(B)(3)(a)(i) for generic numerical standards, or in accordance with OAC Rule 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 2.5 feet;
  - c. Unrestricted potable use ground water standards in accordance with Table VII of OAC Rule 3745-300-08, or in accordance with OAC Rule 3745-300-09(D) for those standards derived through Property-specific risk assessment procedures, in the critical resource aquifer classified in accordance with OAC Rule 3745-300-10 underlying the Property within an approved urban setting designation, at a distance one-half mile from the Property boundary;
  - d. Ground water standards derived through Phase II Property Assessment procedures in accordance with OAC Rule 3745-300-07, for exposures to ecological receptors not related to potable use of the ground water, based upon discharge of ground water in the critical resource aquifer to the

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- Scioto River, such that the ground water concentrations will not result in an exceedence of the generic numerical standards for surface water identified in accordance with OAC Rule 3745-300-08(D);
- e. Soil standards derived through Property-specific risk assessment procedures in accordance with OAC Rule 3745-300-09 for human receptor exposures associated with direct contact with soils by utility workers at the point of compliance from the surface to a depth of six feet at all areas of the Property;
  - f. Soil standards derived through Property-specific risk assessment procedures in accordance with OAC Rule 3745-300-09 for human receptor exposures associated with direct contact with soils by construction workers during the soils management and placement activities at the Property during the period of time subject to requirements addressed by the interim plan as set forth in the O&M Agreement and described in Paragraph (4)(f)(ii) herein, prior to the establishment of the 2.5 foot point of compliance for residential direct contact soils described in Paragraphs (10)(a) and (10)(b) herein.
10. Based on the information contained in the NFA, and upon the implementation of the O&M Agreement and all other conditions set forth herein, the Director has determined that the issuance of a Covenant Not to Sue for the Property is protective of human health, safety and the environment.

## ORDERS

### Covenant

1. Upon the effective date of these Findings and Orders, and subject to the conditions set forth herein, Ohio EPA hereby releases and covenants not to sue Pizzuti Properties/Miranova Limited, and its agents, employees, shareholders, officers, directors, successors or assigns of the Property, from all civil liability to 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 Not to Sue provided in Order No. 1 herein (the "Covenant") shall only apply to the approximately 2.273 acre Property described herein and in the NFA, and the Exhibits attached hereto, upon which the investigational and remedial activities specified in the NFA were conducted.
3. Pursuant to ORC Section 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, including but not limited to, the terms and conditions of the O&M Agreement.
4. Pursuant to ORC Section 3746.05, any use of the Property that does not comply with the institutional controls identified herein, including the non-deed use restrictions, shall void the Covenant on and after the commencement of the noncomplying use. Pursuant to ORC Section 3746.171, authorized representatives of Ohio EPA shall be granted access to the Property for visual inspection purposes to determine whether the Property is being used in compliance with the institutional controls identified herein.
5. The Covenant shall not apply to releases of hazardous substances or petroleum:
  - a. that occur after the submittal of the NFA to Ohio EPA; or
  - b. on or emanating from the Property, that are not described in the NFA; or
  - c. for which investigational or remedial activities were conducted that were not in compliance with ORC Chapter 3746 and OAC Chapter 3745-300.
6. 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. Sections 9607 and 9613, as amended; or
  - b. to claims the State may have pursuant to Section 107 of CERCLA, 42 U.S.C. Section 9607, as amended, for costs other than those for damages to natural

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resources, provided that the State incurs those other costs as a result of an action by the United States Environmental Protection Agency; or

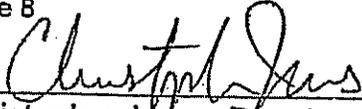
- c. as otherwise specifically provided in ORC Chapter 3746.
7. Nothing in ORC Chapter 3746 limits the authority of the Director to act under ORC Sections 3734.13 and 3734.20 to 3734.23, or to request that a civil action be brought pursuant to the ORC or common law of the State to recover the costs incurred by Ohio EPA for investigating or remediating a release or threatened release of hazardous substances or petroleum at or from a property where a voluntary action is being or has been conducted under ORC Chapter 3746 and OAC Chapter 3745-300, when the Director determines that the release or threatened release poses an imminent and substantial threat to public health or safety or the environment.
8. Nothing in 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. Pursuant to ORC Section 3746.12(A)(2)(c), the Covenant shall be revoked if the engineering controls are violated or are no longer in place and the responsible person or entity has not reinstated the controls within a reasonable period of time as determined by the Director in accordance with the Covenant.

#### Deed Record and Transfer

9. A summary of the NFA, as approved by Ohio EPA, and a copy of these Findings and Orders, including Exhibits 1 (Legal Description), 2 (Site Map) and 3 (O&M Agreement), shall be recorded in the Franklin County Recorder's Office, in the same manner as a deed to the Property, within sixty (60) days of the effective date of these Findings and Orders.
10. Pursuant to ORC Section 3746.14 and OAC Rule 3745-300-13(K), the NFA and the Covenant may be transferred to any person by assignment or in conjunction with the acquisition of title to the Property. Pursuant to ORC Section 3746.12(A)(2)(b), the transferor of the Covenant (and accompanying O&M Agreement) shall notify the Director of any transfer or assignment of the Covenant or the Property whenever such transfer or assignment occurs.

**IT IS SO ORDERED:**

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Christopher Jones, Director  
Ohio Environmental Protection Agency

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