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OHIO EPA

OHIO E.P.A.
OCT 25 2000
ENTERED DIRECTOR'S JOURNAL

BEFORE THE

OHIO ENVIRONMENTAL PROTECTION AGENCY

In the matter of:	:	
H2O Island LLC 1533 Lakeshore Drive, Suite 50 Columbus, Ohio 43204	:	**Covenant Not to Sue** **Director's Final Findings and Orders**
Regarding property known as:	:	
Watermark Peninsula 1801 Watermark Drive 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" or "Ohio EPA") hereby makes the following Findings and issues the following Orders ("Findings and Orders").

FINDINGS

1. An original No Further Action Letter, No. 99NFA064 (the "NFA Letter"), was submitted on June 25, 1999 to Ohio EPA's Division of Emergency and Remedial Response, Voluntary Action Program ("VAP") on behalf of Watermark Island LLC, the predecessor in interest to H2O Island LLC (the "Volunteer"), by Christopher W. Krumm, a certified professional, No. CP 177, as defined in ORC 3746.01(E) and OAC 3745-300-01(A)(8) (the "Certified Professional").

2. Addenda to the NFA Letter, dated April 6, 2000 and September 6 and October 12, 2000, were submitted to Ohio EPA by the Certified Professional. For the purposes

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 [illegible] 10-25-00

of these Findings and Orders, the term "NFA Letter" includes the addenda.

3. The NFA Letter describes investigational and remedial activities undertaken on the approximately 10.159 acre site, known as the Watermark Peninsula, located at 1801 Watermark Drive, Columbus, Franklin County, Ohio (the "Property"). An exact legal description of the Property is attached hereto as Exhibit 1. A site location map is attached hereto as Exhibit 2. The NFA Letter includes an Executive Summary, which is attached hereto Exhibit 3. The current owner of the Property is H2O Island LLC.

4. Based upon the information contained in the NFA Letter, the following investigational and remedial activities were undertaken on behalf of the Volunteer 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 at or emanated from the Property;

   b. a Phase II Property Assessment, in accordance with OAC 3745-300-07, including but not limited to investigations of all identified areas of concern and affected media, to assess environmental conditions related to any release of hazardous substances and petroleum;

   c. a demonstration that compliance with applicable standards has been achieved through the use of generic numerical standards in accordance with OAC 3745-300-08; and

   d. institutional controls contained in a Limited Warranty Deed, recorded on January 25, 2000 in the Franklin County Recorder's Office, Instrument number 200001250016565 (the "Deed Restriction"), which: (i) restricts the use of the Property to commercial and/or industrial purposes; and (ii) prohibits the use of ground water located beneath the Property for any purpose or use, potable or otherwise, except for purposes of environmental investigation or environmental 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. The laboratory, DLZ Laboratories, No. CL0014, located at 6121 Huntley Road, Columbus, Ohio 43229 -1003, was a "Certified Laboratory," 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 at the time the analyses supporting the NFA were performed.

7. According to information provided by the Certified Laboratory in an affidavit 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 Deed Restriction, a copy of which is attached hereto as Exhibit 4, was recorded in accordance with ORC 3746.14 and OAC 3745-300-13(E)(13). The Deed Restriction limits the use of the Property as follows:

   a. restricts the use of the Property to commercial and/or industrial purposes;

   b. prohibits the use of ground water located beneath the Property for any purpose or use, potable or otherwise, except for environmental investigation or environmental remediation.

9. Based on the information contained in the NFA Letter, and upon all other conditions set forth herein, the Property meets the applicable standards contained in ORC Chapter 3746 and OAC Chapter 3745-300 for commercial and/or industrial land uses, including but not limited to:

   a. Commercial and industrial land use category generic direct contact soil standards for hazardous substances in accordance with Tables III, IV, V and VI of OAC 3745-300-08 at a point of compliance from the surface to a depth of 6 feet;

   b. Commercial and industrial land use category generic direct contact soil standards for petroleum in accordance with OAC 3745-300-08(B)(3)(a)(i)and (ii) at a point of compliance from the surface to a depth of 6 feet;

c. Unrestricted potable use ground water standards in accordance with Table VII of OAC 3745-300-08 for the Class A aquifer underlying the Property;

d. Soil standards derived through Property-specific risk assessment procedures in accordance with OAC 3745-300-09(D), to satisfy the requirements in OAC 3745-300-10(E) to ensure the protection of ground water meeting unrestricted potable use standards in the Class A aquifer at all points underlying the Property; and

e. Demonstration that chemicals of concern are not on, underlying, or emanating from the Property at concentrations that could be harmful to ecological resources through a qualitative ecological risk assessment conducted in accordance with OAC 3745-300-09(E).

10. Based on the information contained in the NFA Letter and subject to all other 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 effective date of these Findings and Orders, and subject to the conditions set forth herein, Ohio EPA hereby covenants not to sue and releases H2O Island LLC, 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 Property described in these Findings and Orders, the NFA Letter, and the Exhibits attached hereto, upon which the investigational and/or 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 Deed Restriction, voids the Covenant on and after the commencement of the noncomplying use.

5. 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 Deed Restriction.

6. 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.

7. 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;

   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 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.

8. 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 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.

9. 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

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

Transfer

11. Pursuant to ORC 3746.14 and OAC 3745-300-13(K), the NFA Letter and the Covenant may be transferred to any person by assignment or in conjunction with the acquisition of title to the Property.

IT IS SO ORDERED:

Christopher Jones, Director
Ohio Environmental Protection Agency

OCT 25 2000
Date

EXHIBIT 1

Legal Description

EXHIBIT 1

DESCRIPTION OF 10.159+/- ACRES OF PENINSULA PROPERTY LOCATED AT 1801 WATERMARK DRIVE, COLUMBUS, OHIO

Situated in the State of Ohio, County of Franklin, City of Columbus, in Section 12, Township 1 North, Range 23 West, Congress Lands, and being 10.159 acres of land, more or less, out of a 19.617 acre tract of land conveyed as Tract One and a 0.488 acre tract of land conveyed as Tract Two to H2O Island LLC, by deed of record in Instrument 200002170032899, Recorder's Office, Franklin County, Ohio, said shoreline area bounded and described as follows:

Beginning at a point at the west end of a jog in the west line of Watermark Drive (80 feet in width to the north) as shown upon the plat of The Watermark, of record in Plat Book 63, Page 101, Recorder's Office, Franklin County, Ohio, at the northwest corner of said 0.488 acre tract, at the northeast corner of a 70.299 acre tract of land conveyed to Bay Shoreline, Inc. by deed of record in Instrument 199906080146048, Recorder's Office, Franklin County, Ohio and at the southeast corner of a 2.768 acre tract of land conveyed to Builders Exchange of Central Ohio by deed of record in Official Record 10740, Page A 13, Recorder's Office, Franklin County, Ohio;

thence S 75° 50' 00" E along said jog in the west line of Watermark Drive and along the north line of said 0.488 acre tract a distance of 10.00 feet to a point at the east end of said jog in the west line of Watermark Drive (60 feet in width to the south) and at the northeast corner of said 0.488 acre tract;

thence S 14° 10' 00" W along a west line of Watermark Drive and along the east line of said 0.488 acre tract a distance of 66.39 feet to a point of curvature;

thence southerly along a portion of a curved southwest line of Watermark Drive, along a portion of the curved northeast line of said 0.488 acre tract and with a curve to the left, data of which is: radius = 295.00 feet and sub-delta = 53° 29' 12", a sub-chord distance of 265.50 feet bearing S 12° 34' 36" E to a point at the southeast corner of said 0.488 acre tract at a northeast corner of a 33.091 acre tract of land conveyed to The Western and Southern Life Insurance Company by deed of record in Official Record 31113, Page F 15, Recorder's Office, Franklin County, Ohio;

thence S 55° 00' 00" W along the southwest line of said 0.488 acre tract and along the northwest line of said 33.091 acre tract a distance of 89.62 feet to a point;

thence crossing a portion of said 0.488 acre tract, crossing a portion of said 19.617 acre tract and along the approximate shoreline the following Twenty-Seven (27) courses:

1. N 78° 35' 55" W a distance of 61.60 feet to a point;
2. N 70° 28' 47" W a distance of 73.32 feet to a point;
3. S 54° 08' 36" W a distance of 187.53 feet to a point;
4. S 54° 47' 38" W a distance of 88.63 feet to a point;
5. S 51° 17' 04" W a distance of 187.14 feet to a point;
6. S 34° 05' 45" W a distance of 61.86 feet to a point;
7. S 44° 33' 44" W a distance of 74.87 feet to a point;
8. S 18° 41' 15" W a distance of 37.88 feet to a point;
9. S 35° 14' 00" W a distance of 52.03 feet to a point;
10. S 14° 31' 07" W a distance of 64.30 feet to a point;

11. S 19° 19' 19" W a distance of 106.36 feet to a point;
12. S 32° 42' 45" W a distance of 68.43 feet to a point;
13. S 42° 14' 31" W a distance of 107.72 feet to a point;
14. S 56° 39' 27" W a distance of 12.16 feet to a point;
15. N 56° 01' 39" W a distance of 12.84 feet to a point;
16. N 33° 08' 06" W a distance of 20.39 feet to a point;
17. N 86° 23' 29" W a distance of 25.64 feet to a point;
18. N 79° 25' 15" W a distance of 76.04 feet to a point;
19. S 87° 30' 43" W a distance of 47.72 feet to a point;
20. N 45° 51' 22" W a distance of 89.86 feet to a point;
21. N 15° 28' 24" W a distance of 14.64 feet to a point;
22. N 08° 21' 21" E a distance of 37.78 feet to a point;
23. N 16° 28' 36" E a distance of 43.34 feet to a point;
24. N 07° 00' 40" W a distance of 131.12 feet to a point;
25. N 24° 12' 22" E a distance of 21.56 feet to a point;
26. N 25° 20' 47" W a distance of 50.10 feet to a point;
27. N 44° 17' 00" W a distance of 28.36 feet to a point in a northwest line of said 19.617 acre tract and in a southwest line of said 70.299 acre tract;

thence N 30° 00' 00" E along a northwest line of said 19.617 acre tract and along a southeast line of said 70.299 acre tract a distance of 30.22 feet to a point at corner of said 19.617 acre tract and at a corner of said 70.299 acre tract;

thence N 60° 00' 00" W along a southwest line of said 19.617 acre tract and along a northeast line of said 70.299 acre tract a distance of 125.09 feet to a point;

thence crossing a portion of said 19.617 acre tract and along the approximate shoreline the following Twenty-Nine (29) courses:

1. N 24° 54' 08" W a distance of 94.46 feet to a point;
2. N 46° 46' 35" E a distance of 22.12 feet to a point;
3. N 09° 37' 02" E a distance of 25.31 feet to a point;
4. N 59° 27' 56" W a distance of 76.61 feet to a point;
5. N 51° 00' 13" W a distance of 37.25 feet to a point;
6. N 41° 49' 44" W a distance of 77.50 feet to a point;
7. N 27° 12' 36" W a distance of 70.74 feet to a point of curvature;
8. with a curve to the right, data of which is: radius = 55.00 feet, and delta = 137° 25' 10", a chord distance of 102.49 feet bearing N 31° 43' 34" E to a point of non-tangency;
9. S 78° 02' 14" E a distance of 109.11 feet to a point;
10. S 82° 08' 21" E a distance of 60.80 feet to a point;

11. S 74° 12' 55" E a distance of 100.39 feet to a point;
12. S 60° 58' 43" E a distance of 141.33 feet to a point;
13. S 56° 59' 25" E a distance of 45.79 feet to a point;
14. S 42° 53' 48" E a distance of 132.52 feet to a point;
15. S 55° 13' 49" E a distance of 88.87 feet to a point;
16. S 81° 35' 23" E a distance of 23.34 feet to a point;
17. S 65° 05' 34" E a distance of 83.35 feet to a point;
18. N 71° 01' 11" E a distance of 48.90 feet to a point;
19. N 57° 21' 01" E a distance of 44.63 feet to a point;
20. N 50° 41' 46" E a distance of 48.73 feet to a point;
21. N 55° 47' 01" E a distance of 316.41 feet to a point;
22. N 62° 45' 23" E a distance of 116.22 feet to a point;
23. N 56° 36' 47" E a distance of 56.03 feet to a point;
24. N 42° 59' 30" E a distance of 48.16 feet to a point;
25. N 23° 33' 38" E a distance of 37.22 feet to a point;
26. N 14° 12' 23" E a distance of 77.47 feet to a point;
27. N 71° 07' 04" E a distance of 13.38 feet to a point;
28. N 06° 45' 55" W a distance of 7.74 feet to a point;
29. N 56° 03' 33" W a distance of 13.20 feet to a point in a northwest line of said 19.617 acre tract and in a southwest line of said 70.299 acre tract;

thence N 55° 00' 00" E along a northwest line of said 19.617 acre tract and along a southeast line of said 70.299 acre tract a distance of 39.20 feet to a point at corner of said 19.617 acre tract and at a corner of said 70.299 acre tract;

thence N 14° 10' 00" E along the west line of said 19.617 acre tract and along an east line of said 70.299 acre tract a distance of 34.71 feet to the place of beginning;

containing 10.159 acres of land more or less.

The above description was prepared by Kevin L. Baxter, Ohio Surveyor No. 7697, of C.F. Bird & R.J. Bull, Inc., Consulting Engineers & Surveyors, Columbus, Ohio, from best available Court House records in September, 2000. Basis of bearings is the north line of said 0.488 acre tract, being N 75° 50' W, as shown of record in Instrument 200002170032899, Recorder's Office, Franklin County, Ohio.

Map 1

EXHIBIT 2

Site Map

EXHIBIT 3

Executive Summary

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Instr:200001250016565 01/25/2000
Pages:4 Fee:$22.00 12:40PM
Richard D. Metcalf T20000010425
Franklin County Recorder MLSTEVEN J

LIMITED WARRANTY DEED

KNOW ALL MEN BY THESE PRESENTS, that **Watermark Island, LLC**, an Ohio limited liability company (the "Grantor"), in consideration of the sum of Ten Dollars ($10.00) and other valuable consideration paid to it by **Laura Piland**, an individual whose tax mailing address is 1225 Dublin Road, Columbus, Ohio 43215 (the "Grantee"), the receipt and sufficiency of which are hereby acknowledged, hereby grants with limited warranty covenants to the Grantee and her heirs and assigns forever, that certain parcel of real property (the "Property") that is situated in the County of Franklin in the State of Ohio, and in the City of Columbus, and is more particularly described in the attached Exhibit A which is incorporated herein by this reference. The foregoing conveyance is made subject, however, to the lien of non-delinquent real estate taxes and assessments, legal streets and highways, zoning and building ordinances and regulations, the lien of that certain Open-End Mortgage, Assignment of Rents and Security Agreement from the Grantor as mortgagor to The Huntington National Bank, a national banking association, as mortgagee, of record in the Recorder's Office of Franklin County, Ohio as Instrument No. 199905200128527, which mortgage the Property will continue to be subject to but which is not being assumed by the Grantee hereunder, and all building setback lines, rights-of-way, easements, covenants, conditions and restrictions of record, if any.

In furtherance of Chapter 3746 of the Ohio Revised Code and for the express purpose of obtaining and maintaining a "Covenant Not to Sue" with respect to the Property from the Ohio Environmental Protection Agency (the "Ohio EPA") under its Voluntary Action Program, and as further consideration for this conveyance of the Property to the Grantee and as a condition of that conveyance, the Grantor executes and delivers this deed and the Grantee accepts the same subject to the following reservations, restrictions, covenants and conditions (collectively the "Restrictions"), all of which shall run with the Property and shall be binding upon the Grantee and her heirs and assigns forever (including without limitation the holder of any leasehold interests in or to the Property or any part thereof), subject only to the rights of termination that are specified hereinafter:

1. Development Restrictions. The Property shall be used and developed only for such commercial and/or industrial purposes as are permitted by applicable zoning laws, as provided in Rule 3745-300-08(B)(2)(c)(ii) and (iii) of the Ohio Administrative Code as it

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JAN 25 2000
RICHARD D. METCALF
AUDITOR

200078
CONVEYANCE TAX
EXEMPT

was effective on December 16, 1996. Groundwater underlying the Property shall not be used for any purposes other than environmental investigation or environmental remediation.

2. Enforcement. Compliance with the 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 then current owner of the Property or any part thereof, including any leasehold interest therein; (ii) the Ohio EPA; or (iii) any other party with an interest in the Property or which may incur liability as a result of any failure of compliance with the Restrictions. Any delay on the part of any of the foregoing parties to take any action to enforce compliance with the Restrictions shall not bar any subsequent enforcement with respect to the failure of compliance in question, nor shall any delay or failure on the part of any of the foregoing parties to take any action to enforce compliance with the Restrictions be deemed a waiver of the right of any such party to take any such action with respect to any future failure of compliance.

3. Miscellaneous. If any of the Restrictions or any provisions thereof are found to be unenforceable in any respect, the validity, legality and enforceability of the remaining provisions of the Restrictions shall not be affected or impaired thereby. The Restrictions shall be governed by and construed in accordance with the laws of the State of Ohio, and specifically, Chapter 3746 of the Ohio Revised Code and the Ohio Administrative Code rules adopted thereunder. All headings used in this deed are for convenience of reference only and shall not be used to interpret the Restrictions or any provision thereof.

4. Effective Date and Termination. This deed shall be filed for record, and the Restrictions shall become effective, simultaneous with the issuance by Ohio EPA of a Covenant Not to Sue with respect to the Property. The Grantor and the Grantee and their heirs and assigns reserve the right to terminate any or all of the Restrictions if, with respect to the Property, the Ohio EPA denies, fails to issue, or revokes a Covenant Not to Sue. Otherwise, the Restrictions may only be amended or terminated with the prior written approval of Ohio EPA, which amendment or termination must be filed in the deed records maintained in the Recorder's Office of Franklin County, Ohio in order to be effective.

The instrument by which the Grantor claims title to the Property is recorded in the Recorder's Office of Franklin County, Ohio as Instrument No. 199905200128525.

IN WITNESS WHEREOF, Watermark Island, LLC has caused this instrument to be executed and acknowledged by its Managing Member this 25th day of January, 2000.

Signed and acknowledged
in the presence of:

WATERMARK ISLAND, LLC

Steven J. McCoy
Print name: Steven J. McCoy

By: _____
H. Burkley Showe, Managing Member

Lisa Jones
Print name: Lisa Jones

STATE OF OHIO)
FRANKLIN COUNTY) SS:

The foregoing instrument was acknowledged before me this 25th day of January, 2000 by H. Burkley Showe, the Managing Member of Watermark Island, LLC, an Ohio limited liability company, on behalf of said limited liability company.

Steven J. McCoy
Notary Public

STEVEN J. McCOY
ATTORNEY AT LAW
NOTARY PUBLIC - STATE OF OHIO
LIFETIME COMMISSION

This instrument was prepared by:
Steven J. McCoy, Attorney at Law
National Housing Corporation
1225 Dublin Road
Columbus, Ohio 43215

EXHIBIT A

Situated in the County of Franklin in the State of Ohio, and in the City of Columbus, and being in Section 12 of Township 1 North, Range 23 East, Congress Lands, and being part of the land conveyed to Watermark Island, LLC, an Ohio limited liability company, by the deed of record as Instrument No. 199905200128525 (with all record references herein being to records maintained in the Recorder's Office of Franklin County, Ohio), and bounded and described as follows:

Beginning, for reference, at an iron pin marking the northwest corner of that 2.985 acre tract of land conveyed to The Builders Exchange of Columbus Ltd. by the deed of record in Deed Book 3497, Page 555, said point being in the southerly right of way line of Dublin Road;

Thence westerly along the northerly line of said tract, North 75 degrees 50 minutes West, 30.00 feet to a point at the northwesterly corner of a tract of land conveyed to Parkland Development Co. by the deed of record in Official Records Volume 5055, Page C02; thence South 14 degrees 10 minutes West, on and along a property line and its extension thereof a distance of 360.64 feet to a point on the property line formerly between American Aggregates Corporation and Parkland Development Co. to the real place of beginning:

Thence from said real place of beginning, South 55 degrees 0 minutes West, 709.13 feet to a point in a lake; thence North 60 degrees 0 minutes West, 820.00 feet to a point in said lake; thence South 30 degrees 0 minutes West, 445.00 feet to a point in the lake; thence South 60 degrees 0 minutes East, 515.00 feet to a point in the lake; thence South 30 degrees 0 minutes West, 375.00 feet to a point in the lake; thence South 60 degrees 0 minutes East, 600.00 feet to a point in the lake; thence North 30 degrees 0 minutes East, 805.00 feet to a point in the lake; thence North 55 degrees 0 minutes East, 281.34 feet to a point on the easterly property line of the former American Aggregates property, which point is in the lake; thence North 14 degrees 10 minutes East, on and along the property line formerly between American Aggregates Corporation and Parkland Development Co., a distance of 418.59 feet to the real point of beginning and containing 19.617 acres of land and water, more or less.

The foregoing description was developed from a survey by Evans, Mechwart, Hambleton and Tilton, Inc. dated November, 1984 of lands conveyed to Parkland Development Co. by the deed of record in Official Records Volume 5055, Page C02.

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Description Verified
John Circle, P.E., P.S.
Franklin County Engineer
Date: 1/25/2000

SECTION 1.0
INTRODUCTION

The Volunteer, Watermark Island, L.L.C. (Watermark) retained R.D. Zande and Associates, Inc. (R.D. Zande) to conduct a Phase II Environmental Site Assessment of the approximately seven acre peninsula located off Watermark Drive in Columbus, Ohio. The purpose of the Phase II Environmental Site Assessment was to screen the near subsurface of the peninsula by soil sampling to determine if it contained any chemical constituents which may be potentially hazardous or toxic materials (e.g. hazardous wastes, polychlorinated biphenyls, or asbestos). The assessment was completed on June 9, 1999. All information gathered and methods used to collect data were consistent with OAC 3745-300-07.

1.1 REQUIREMENTS

This submittal and attachments are to satisfy the requirements of OAC 3745-300-13(H). The NFA letter is summarized below and on the attached form provided by the Director, pursuant to OAC 3745-300 (I).

1.2 AUTHORITY

The NFA is issued under the authority of Certified Professional, Christopher Krumm, CP#177.

1.3 SUMMARY OF ACTIVITIES

This No Further Action (NFA) is for the approximately seven (7) acre undeveloped peninsula located in the quarry lake off Watermark Drive, 1957 Dublin Road, Columbus, Ohio 43215. The Volunteer is Watermark Island, L.C.C., 1225 Dublin Road, Columbus, Ohio 43215.

The investigation activities conducted consisted of updating and revising a previous Phase I investigation for the subject property to VAP standards, completed in August 1997 and completing a Phase II Investigation. The initial Phase II investigation, completed December 17, 1998, utilized seven borings, one per acre, at randomly selected locations, to six feet, and two composite samples per boring, or fourteen (14) samples. The analytical results of these samples were used as screening data to select locations for additional borings under the VAP program. The two one-acre plots with the highest analytical results (i.e., highest indicators of potential contamination) were selected for the borings. One of six subsections within each of these one-acre plots was randomly selected, and a single boring to six feet was placed in each of the subsections, and two composite samples, taken from 0-3 feet and 3-6 feet below the surface. The shallow depth of the borings was based on the proposed filling of wide areas of the property with clean fill, and the intended slab on-grade commercial construction. This investigation was initiated in March 1999 and completed in June 1999.

A total of four (4) confirmatory samples were sent to a VAP lab, DL2 Laboratories, Columbus, Ohio.

All results were evaluated against VAP generic direct contact soil standards, and all applicable

pathways for contaminants of concern. The review period requested for this NFA is 90 days.

1.4 DATE OF NFA

The NFA letter was issued on June 23, 1999. A modification of the NFA was submitted on October 8, 1999. This modification included a Warranty Deed with a commercial and/or industrial use restriction.

1.5 COPIES OF NFA

A summary of the NFA letter may be obtained from the Franklin County Recorder's Office, 373 South High St., Columbus, Ohio 43215.

A complete copy of the NFA Letter may be obtained from the Ohio EPA, 122 S. Front Street, P.O. Box 1049, Columbus, Ohio 43216-1049.

1.6 PERSONNEL WHO WORKED ON THE VAP NFA AND SUPPORTING DOCUMENTATION

Christopher Krumm. Hydrogeologist VAP Certified Professional #177 oversaw and conducted field investigations and Phase II preparation, evaluated findings and results. Completed NFA letter and documents.

Sherry Blahnik - Sr. Environmental Scientist, Associate, oversaw and completed the updated VAP Phase I.

Richard Moffa - Environmental Project Manager. Assisted in workplan development, evaluation of analytical results, completion and review of Phase I and Phase II components.

Jeffrey Hemphill - Environmental Scientist. Conducted and completed the Phase I portion of the report.

Nathan Hull - Geologist. Completed boring logs and related information.

Jim Gates - Environmental Scientist. Conducted Phase I field work and data gathering.

Resumes on these individuals are attached to the supporting documentation.

SECTION 2.0
SUMMARY OF NO FURTHER ACTION LETTER

The approximate seven acre peninsula is located in a former sand and gravel quarry west of downtown Columbus, Ohio. No structures are situated on the site. The lake surrounding the site was formed from quarry operations that began in the early 1940s. The peninsula protrudes westward from Watermark Drive out to the central portion of the lake within the abandoned quarry. The peninsula portion of the property, which is irregular in shape, is currently vacant and overgrown with vegetation. The peninsula appears to have been composed largely of demolition and fill material obtained from a railroad yard. The peninsula portion of the site (735 feet above mean sea level [MSL] at highest level) is approximately 15 to 20 feet higher in elevation than the lake (715 feet above MSL). The lake is bordered by a bank area mainly consisting of scrub/shrub vegetation.

The Phase I and Phase II Property Assessments evaluated the peninsula and determined that the property is primarily construction fill. The construction fill contains low levels of volatile and semivolatile compounds typical of asphalt and other construction fill. These compounds comprised the chemicals of concern. An evaluation of exposure pathways determined the receptors to be restricted to construction workers, workers of the future office building(s), local residents using the peninsula for informal recreation, and flora and fauna that live on the peninsula and in the quarry. The chemicals of concern have not caused any apparent degradation in the environmental quality of the quarry and the surrounding area.

The proposed use of the peninsula is the building of a slab commercial building(s) and parking lot on the larger portion of the peninsula and the building of an access road on the narrow neck of the peninsula. The plans also include grading the areas under the flood plain with clean fill and grading other areas with clean fill for landscaping purposes. The planned activities will disturb the fill minimally and when completed, will provide further isolation of the construction fill from being a potential source for human and ecological receptors. It is on this basis that this "Brownfield" is a candidate for NFA.

2.1 PHASE I PROPERTY ASSESSMENT

Watermark Island, L.L.C. retained R. D. Zande and Associates, Inc. to conduct a Phase I Property Assessment of the approximate seven acre peninsula located at 1957 Dublin Road Columbus, Ohio. Site maps are included in Appendix 1. The assessment was completed in accordance with our agreement dated March 3, 1999 and the Scope of Services outlined therein.

In conducting the Phase I Property Assessment, our objective was to gather as much information about the site as was readily available to determine whether any obvious areas of environmental contamination or other environmental concerns exist at the site. We gathered information from a number of sources including records maintained by various environmental regulatory agencies, past aerial photographs of the site and interviews with personnel familiar with the site. Appendix 2 contains copies of the interview and regulatory review records prepared during the course of the assessment. The purpose of the records search was to assimilate information about the site and identify areas of known or suspected environmental contamination.

R. D. Zande and Associates, Inc. representatives performed the on-site survey portion of the assessment on April 19, 1999. The on-site survey consisted of a visual inspection of the property with emphasis on (a) possible sources of environmental contamination by potentially hazardous or toxic materials (e.g., hazardous wastes, polychlorinated biphenyls and asbestos), (b) the potential presence of underground storage tanks, (c) site operations which could lead or contribute to environmental contamination, and (d) the potential presence of wetlands on undeveloped property. To the extent possible, we also considered the potential effect on the environmental quality of the site from conditions on surrounding properties. The field survey checklist is included in Appendix 3. Photographs taken during the on-site survey are contained in Appendix 4.

Based upon the review of available information gathered during the Phase I Property Assessment and the on-site survey conducted by R.D. Zande and Associates, Inc. staff, two potential identified areas are associated with the subject property at this time.

The first identified area involves the construction/demolition debris including concrete curbs and slabs, rebar, wooden skids, railroad ties, and asphalt observed on-site. In addition, an above ground storage tank of unknown size and content was observed protruding from the east bank of the peninsula. The above ground storage tank appeared empty. No evidence was observed of other tanks and/or drums abandoned on-site. The abandoned storage tank will be removed and disposed as part of the grading process.

The second identified area involves the fact that five sites listed by the Ohio EPA as potential State or federal Superfund sites are located within one mile of the subject site and eight active leaking underground storage tank (UST) sites are located within one-half mile of the subject site. Based on the information we reviewed regarding these sites and given their distances from the subject property, we believe they pose only a limited risk to the surrounding quarry surface water. See Sections 4.0 and 4.4 for additional information regarding these sites.

2.2 PHASE II PROPERTY ASSESSMENT

2.2.1 Soil Investigation

The soil investigation was completed in two steps. In the first step (December 17, 1999) seven soil borings were drilled to six feet on the peninsula and soil samples were collected for screening purposes. These samples were transported to Zande Environmental Services, Inc. for laboratory analysis. These initial borings provided information on the areas of most concern on the property, that is, areas where chemical constituents which may be potential hazardous probably occur in the highest concentrations.

The second step (March 13, 1999) of the Phase II Property Assessment collected four additional soil samples from two additional confirmatory borings drilled to six foot each. These borings were drilled in the two areas which contained chemical constituents of highest concentration, based on the initial seven screening borings. The soil samples were then sent to a laboratory certified under the Voluntary Action Program: DLZ Laboratories of Columbus, Ohio for analysis of potential hazardous chemical constituents.

2.2.1.1 Soil Investigation Procedures

Wright Drilling of Mt. Sterling, Ohio (Wright Drilling) mobilized a two-man crew and drill rig to the site to drill the seven screening and two confirmatory soil borings. The borings were numbered SB-6 to SB-12, and SB-13 and SB-14, which was in sequence with the boring numbers of the geotechnical work. Each boring was completed by advancing 4.25-inch diameter hollow stem augers (HSA) with continuous sampling by means of stainless steel split barrel sampling tubes (split spoons) using ASTM procedures D-1586. All augers and sampling tubes were decontaminated by steam cleaning prior to initial use and prior to re-use in order to assure sample quality and prevent cross contamination. Soil samples were retained from two zones, from the 0 to 3 foot zone, and the 3 to 6 foot zone and retained for the R.D. Zande Environmental Services, Inc. Laboratory for the screening samples and DLZ Laboratory for the VAP confirmatory samples. The soil samples were placed in a cooler retained at 4 degrees Celsius or refrigerated unit for storage until the samples were analyzed. A chain of custody (COC) form accompanied the cooler of samples.

2.2.1.2 Laboratory Analysis

A total of 14 soil samples were sent from the 7 screening soil borings to Zande Environmental Services, Inc. The soil samples were analyzed by the laboratory for of volatile organic compounds (VOCs - EPA Method 8260), total petroleum hydrocarbons (TPH - EPA Method 418.1), polychlorinated biphenyls (PCBs - EPA Method 8080), for semivolatile compounds (SVOCs - EPA Method 8270), and for the eight RCRA metals (EPA Method 6010). As discussed in the following section, one sample was analyzed for lead using the Toxicity Characteristic Leaching Procedure (TCLP) to determine if it was hazardous.

A total of 4 soil samples were sent from the 2 confirmatory soil borings to DLZ Laboratory, Inc. The soil samples were analyzed by the laboratory for of volatile organic compounds (VOCs - EPA Method 8260), total petroleum hydrocarbons (TPH - EPA Method 418.1), polychlorinated biphenyls (PCBs - EPA Method 8080), for semivolatile compounds (SVOCs - EPA Method 8270), and for the eight

RCRA metals (EPA Method 6010). As discussed in the following section, one samples were analyzed for lead using the Toxicity Characteristic Leaching Procedure (TCLP) to determine if it was hazardous.

2.2.1.3 Analytical Results and Chemicals of Concern

No VOCs were detected above laboratory detection limits in the 14 soil samples. No PCBs were detected above detection limits in the 14 soil samples. There was one sample (SB-6/3-6) which contained an elevated lead value (362 mg/kg). This sample was then analyzed for extractable lead using the TCLP. The results of this TCLP analysis determined that the lead was not extractable, as the concentration of lead in the extraction liquid remained less than 0.03 mg/L, which is the detection limit for this procedure.

The soil results indicate some TPH in the shallow soils at the Peninsula. The concentrations were at maximum 690 mg/kg (SB-7/3-6). These concentrations are lower than the BUSTR Category 3 action levels. Therefore they are below the levels that would necessitate remediation under OEPA guidelines for Petroleum Contaminated Soil (PCS).

The results of the laboratory analysis of the VAP confirmatory soil samples detected small concentrations of VOCs in soil sample SB-13/3-6, including 2-chlorotoluene (0.261 mg/kg) and 1,2-dichlorobenzene (0.459 mg/kg) and in soil sample SB-14/3-6 VOCs benzene (0.0054 mg/kg), toluene (0.0108 mg/kg), xylene (0.041 mg/kg), and 1,3,5-trimethylbenzene (0.0141 mg/kg). No PCBs were detected above detection limits in the 4 soil samples. There was one sample (SB-13/3-6) which contained an elevated lead value (130 mg/kg). This sample was then analyzed for extractable lead using the TCLP method. The results of this TCLP analysis determined that the lead was not extractable, as the concentration of lead in the extraction liquid remained less than 0.03 mg/L, which is the detection limit for this procedure.

A number of semivolatile (SVOC) compounds were detected in the soils, in particular naphthalene at 19.700 mg/kg in SB-13/3-6. A total of seven other SVOCs were detected in SB-13/3-6 ranging in concentration from 0.360 to 1.170 mg/kg. A total of 12 SVOCs were detected in soil sample SB-14/0-3, ranging in concentration from 0.387 to 2.390 mg/kg. Three SVOCs were detected in SB-14/3-6 ranging in concentration from 0.366 to 3.48 mg/kg.

The soil results indicate some TPH in the shallow soils at the Peninsula. The concentrations were at maximum 244 mg/kg (SB-13/3-6). These concentrations are lower than the BUSTR Category 3 action levels, as calculated in subsection 4.1.2. Therefore they are below the levels that would necessitate remediation under OEPA guidelines for Petroleum Contaminated Soil (PCS).

2.2.2 Ground Water Investigation

2.2.2.1 Regional Ground water

The peninsula is located in a quarry once mined for the outwash sand and gravel deposits associated with the Scioto River. The quarry is now an unnamed lake associated with the Scioto River drainage basin. Underlying the remnants of the sand and gravel deposits is the principal aquifer, a limestone bedrock, consisting of the Delaware and Columbus limestone and the Bass Island Dolomite. They have

been used for industry at pumping rates up to 225 to 500 gallons per minute (gpm) at depths of as much as 400 feet. It is classified as a Class A aquifer as defined by 3735-300-10(C).

2.2.2.2 Local Ground Water

The peninsula is composed of fill, primarily soil and construction debris (concrete and asphalt blocks) hauled to the site during the construction of I-670. The initial saturated zone of the peninsula corresponds to the water level of the quarry lake. Observations by R.D. Zande personnel indicate the quarry fluctuates between approximately 708 and 718 feet mean sea level (MSL), depending on yearly and seasonal adjustments.

The hydraulic characteristics of the ground water under the peninsula were not determined by the installation of wells, however, it is assumed the saturated zone could produce greater than 3 gallons per minute, because of the void spaces in the fill, and because the peninsula is surrounded by the quarry lake and therefore a plentiful recharge source. The saturated zone under the peninsula, for the purposes of this investigation, is therefore assumed to be technically a Class A aquifer as defined by 3735-300-10(C). However it is not a Critical Resource, and there is virtually no likelihood that this highly localized "groundwater" will be used.

Because of the small surface are of the peninsula, infiltration due to precipitation, although it occurs, is probably not the primary recharge component of the saturated zone in the peninsula. Infiltration of the quarry lake water is probably the large recharge component. Therefore evapotranspiration on the peninsula may equal or exceed the infiltration rate. This ratio will increase in the favor of evapotranspiration after construction of the commercial building and building of the parking lots, which will reduce the infiltration rate.

2.2.3 Surface Water Investigation

2.2.3.1 Regional Watershed

The peninsula is located in the center of a large surface water body, the unnamed quarry lake just to the east of Scioto River. Although the quarry is not directly connected to the Scioto River, it is part of the Scioto River drainage basin which eventually drains into the Ohio River.

2.2.3.2 Local Surface Water

The peninsula itself does not have any surface water features, no ditches, rills, wetlands, or ponds. The drainage of surface water during precipitation events is by sheet flow over the peninsula or infiltration into the ground. As such there are no surface water bodies to sample on the peninsula, and therefore no sediments to evaluate.

Overland surface runoff from the fill peninsula has contributed to sediments in the surrounding surface water. It has been demonstrated that the toxicity from soil is likely to be insignificant based on the low concentrations of chemicals of concern and comparisons to benchmarks. However, this contribution has been reduced as vegetation has covered the soil. Further the surrounding larger drainage area likely contributes a considerably larger share of urban developed type sediment to the quarry. This

surrounding drainage includes the extension/exit from I-670, the apartment complex and commercial buildings on the east end, and the buildings and parking lots which line the north shore of the water body, including some drainage through these properties from Dublin Road. The quarry currently supports a very healthy biocommunity of fish, waterfowl and aquatic mammals, including beaver. The proposed improvements/construction on the peninsula will further greatly reduce the impacts to surface water and associated sediments contributed by the peninsula soils in their current state.

2.2.4 Exposure Pathway Assessment

An exposure pathway assessment was conducted of the seven acre peninsula. This pathway evaluation was conducted of all the potential human exposure pathways as listed in Table 1 of 3745-300-07(D)(2)(c) and all potential ecological exposure pathways as listed in Table 2 of 3745-300-07(D)(2)(c). As described in 3745-300-07(D)(2)(a) the following characteristics must be identified:

- Any source, source area, or affected media contributing to the pathway,
- the receptors identified under paragraph 3745-300-07(D)(1)(g) and any applicable point of compliance, and
- the transport mechanism for the pathway.

The following summary discuss the pathways found to be complete.

2.2.4.1 Direct Contact Soils

The upper soils of the peninsula are potentially an exposure pathway for construction workers, commercial office building workers, visitors to the office building, local residents using the peninsula for casual recreation, and ecological receptors such as soil fauna, macroinvertebrates, small animals, and birds.

Construction workers will be exposed to dermal pathways during construction of the office buildings when the soil is disturbed. The primary pathway of concern is dust generation from the disturbed soil resulting in dermal contact or ingestion by swallowing of dust particles. Commercial office building workers, visitors to the office building, and local residents using the peninsula for casual recreation will not be exposed to soil beneath the upper topsoil layer. Their exposure is limited to dust generated from the upper foot of soil. Ecological exposure to the soil is due to flora and fauna which incorporate nutrients or chemicals from the soil and are ingested by small animals, birds, or macroinvertebrates.

The exposure to construction workers will be limited by dust control measures during construction, as per usual OSHA procedures at a construction site. Exposure to the other receptors will be limited by the improvements to the site, including grading and construction of commercial buildings and parking lots, and in general the low concentrations of the COCs.

2.2.4.2 Subsurface Soils: Inhalation

The upper soils of the peninsula are potentially an exposure pathway for construction workers and flora and fauna as fugitive dust during construction. This exposure pathway will be minimized as described

in 2.2.4.1

2.2.4.3 Ground Water: Potable

There are no potential receptors to potable groundwater relative to the 7-acre peninsula. There are no wells on the site accessing groundwater, and there are no active wells within one mile of the site. The Phase II Property Assessment determined the effect of the COCs in the upper layers of the peninsula will be negligible on the ground water, therefore it is assumed the Class A ground water will remain clean. All residents and businesses in area are supplied by the City of Columbus municipal water.

2.2.4.4 Ground Water: Non-potable

There are no potential receptors to non-potable drinking water relative to the 7-acre peninsula as there are no wells on the site accessing groundwater, and there are no active wells within one mile of the site. The underlying ground water is assumed to be Class A, and it has been demonstrated that it will remain clean. However the drinking water is unlikely to be used as irrigation water or other purposes because it is unlikely a well would be drilled into this shallow aquifer when the quarry lake is a much more plentiful and easier source to tap.

2.2.4.5 Surface Water: Potable

There are no potential receptors to potable surface water relative to the 7-acre peninsula. The quarry which surrounds the peninsula is not used for a source of drinking water, and, although the quarry lake is part of the Scioto River basin, the quarry does not have direct surface water inlets or outlets to the Scioto River or any other water body which may be used as a drinking water source.

2.2.4.6 Surface Water: Dermal

There are no potential receptors to dermal contact to surface water on the 7-acre peninsula as there are no defined streams, wetlands, ponds, or other water bodies on the property. All surface water drainage is by sheet flow or is absorbed into the soil.

The receptors to the surrounding quarry surface water include: local residents using the peninsula for casual recreation, and ecological receptors such as soil fauna, macroinvertebrates, small animals, and birds. After construction, the building structure, associated parking lots, access road, and grading with additional clean fill will provide engineering barriers to much of the peninsula. The remaining portion of the peninsula will covered with clean fill and landscaping and the surface water will be directed through storm drains to the quarry. These storm drains will prevent contact of the storm water with the underlying original fill, thus removing the potential dermal pathway of the surface water to commercial office building workers, visitors to the office building, and local residents using the peninsula for casual recreation. These same construction/engineering features will also restrict the soil to surface water to ecological receptor pathway. In addition, it was demonstrated that the toxicity from soil is likely to be insignificant based on the low concentrations of chemicals of concern, a qualitative evaluation, and comparisons to benchmarks.

2.2.4.7 Surface Water: Ingestion

There are no potential receptors to ingestion to surface water on the 7-acre peninsula as there are no defined streams, wetlands, ponds, or other water bodies on the property. All surface water drainage is by sheet flow or is absorbed into the soil. The receptors to the surrounding quarry surface water include: local residents using the peninsula for casual recreation, and ecological receptors such as soil fauna, macroinvertebrates, small animals, and birds. The pathway will be restricted as described in 2.2.4.6 after commercial construction on the peninsula.

2.2.4.8 Sediments: Dermal

There are no potential receptors to dermal contact to sediments on the 7-acre peninsula as there are no defined streams, wetlands, ponds, or other water bodies on the property that contain sediments. All surface water drainage is by sheet flow or is absorbed into the soil. The receptors to the surrounding quarry sediments include: local residents using the peninsula for casual recreation, and ecological receptors such as soil fauna, macroinvertebrates, small animals, and birds. The pathway will be restricted as described in 2.2.4.6 after commercial construction on the peninsula.

2.2.4.9 Sediments : Ingestion

There are no potential receptors to dermal contact to sediments on the 7-acre peninsula as there are no defined streams, wetlands, ponds, or other water bodies on the property that contain sediments. All surface water drainage is by sheet flow or is absorbed into the soil. The receptors to the surrounding quarry sediments include: local residents using the peninsula for casual recreation, and ecological receptors such as soil fauna, macroinvertebrates, small animals, and birds. The pathway will be restricted as described in 2.2.4.6 after commercial construction on the peninsula.

2.2.4.10 Ground Water : Vapor Intrusion to Subsurface Structures

There are no current buildings on the peninsula that have subsurface structures. The office buildings that are to be placed on the peninsula will also not have subsurface structures but will be built on footers and slabs. Based on the Phase II Assessment the ground water is assumed to be clean (Class A). Therefore there is no ground water/vapor intrusion to subsurface structures pathway.

2.2.4.11 Soil: Vapor Intrusion to Subsurface Structures

There are no current buildings on the peninsula that have subsurface structures. The office buildings that are to be placed on the peninsula will also not have subsurface structures but will be built on footers and slabs. The low levels of VOCs detected indicate there are no VOCs in high enough concentrations to be a concern for vapor intrusion. Therefore there is no soil/vapor intrusion to subsurface structures pathway.

2.2.4.12 Surface Water: Ecological (Existing or Potential)

There are no potential ecological receptors to surface water on the 7-acre peninsula as there are no defined streams, wetlands, ponds, or other water bodies on the property. All surface water drainage is

by sheet flow or is absorbed into the soil. The ecological receptors to the surrounding surface water include sediment fauna, macroinvertebrates, small animals, and birds. The pathway will be restricted as described in 2.2.4.6 after commercial construction on the peninsula. In addition, it was demonstrated that the toxicity from any emanation of soil via sheet flow from the Property is likely to be insignificant based on the low concentrations of chemicals of concern, low mobility of COCs, and comparisons to benchmarks.

2.2.4.13 Sediments: Ecological (Existing or Potential)

There are no potential receptors to dermal contact to sediments on the 7-acre peninsula as there are no defined streams, wetlands, ponds, or other water bodies on the property that contain sediments. All surface water drainage is by sheet flow or is absorbed into the soil. The ecological receptors to the surrounding sediments include sediment fauna, macroinvertebrates, small animals, and birds. The pathway will be restricted as described in 2.2.4.6 after commercial construction on the peninsula. In addition, it was demonstrated that the toxicity from any emanation of soil via sheet flow from the Property is likely to be insignificant based on the low concentrations of chemicals of concern, low mobility of COCs, and comparisons to benchmarks.

2.2.4.14 Soil: Ecological (Existing or Potential)

The ecological receptors to the peninsula soils include:

(1) Macroinvertebrates.
(2) Small animals.
(3) Birds, particularly waterfowl

Note that as parts of the peninsula lie below the 100-year flood plain, and uneven areas need to be brought to grade, clean fill will be brought in prior to construction. Therefore surface water contact with the original fill will be eliminated or minimized, thus eliminating or minimizing the pathway of original soils to quarry sediments to receptors. In addition, it was demonstrated that the toxicity from soil is likely to be insignificant based on the low concentrations of chemicals of concern, a qualitative evaluation, and comparisons to benchmarks.

2.3 DETERMINATION OF APPLICABLE STANDARDS

2.3.1 Introduction

The exposure pathway assessment determined there were seven primary pathways for chemicals of concern from the fill material placed to form the peninsula. They are as follows:

1. Direct Contact and Inhalation Soils.
2. Ground Water: Non potable.
3. Off property Surface Water Dermal and Ingestion.
4. Off property Sediments Dermal and Ingestion
5. Off property Surface Water Ecological
6. Off property Sediments Ecological

7. Ecological Soil

The applicable standards of concern are the Generic Direct Contact Standards and OEPA derived Leach-Based Soil Values.

2.4 DETERMINATION OF COMPLIANCE WITH APPLICABLE STANDARDS

2.4.1 Methods for Demonstrating Compliance

The constituents of concern comply with applicable standards or occur at a level and conditions that indicate no remedial action is necessary.

2.4.2 Compliance with Generic Numerical Standards

2.4.2.1 Direct Contact, Inhalation, and Ecological Soils

The applicable standard for pathways number 1 and 7, Direct Contact and Inhalation of soils are the Generic Direct Contact Standards as defined in 3745-300-08(B). The COCs detected in two identified areas, the acre areas where SB-13 and SB-14 were drilled are listed on Attachment III of the Exposure Pathway/COC Table. As shown in the Table none of the COC soil concentrations exceed the Generic Direct Contact standards for a Commercial Setting. Two COCs, 2-chlorotoluene and 1,2-dichlorobenzene have no Generic Direct Contact standards. For the purpose of this investigation, they were assigned minimum direct contact standards of 1 mg/kg, after comparing them to similar compounds that have direct contact standards such as 4-chlorotoluene. Cancer Risk Ratios and noncancer Risk Ratios were then calculated to determine cumulative effects, and are summarized in Table 4. The cumulative ratios were all less than one.

For the Ecological Soils pathway a qualitative assessment is used instead of Applicable Standards. Based on the limited extent of habitat and taking into consideration the development activities taking place at the property, along with the relatively low levels of COCs in the fill materials, the impact of the fill materials is negligible based on toxicological benchmarks developed by Suter, et. al. (1993) and other authors.

2.4.2.2 Ground Water: Potable

To examine the impact of the Chemicals of Concern on the potable Ground Water Ohio EPA Derived Leach-Based Soil Values Technical Guidance Document. Calculated values are listed for benzene, toluene, xylene, naphthalene in this document. These values are listed in the Attached table. For the purposes of this investigation it is assumed the ground water is clean and classified Class A. It is also assumed the vadose zone soils of the peninsula are Type I, characterized by a K value ranging from $1x10^{-3}$ to $1x10^{-4}$ cm/sec, a net recharge rate ranging from approximately eight to fourteen inches per year and a mean annual depth to ground water greater than 5 feet below grade. This type of soil is continuous well-graded sand and gravel, coarse alluvial deposits and fill material.

Of the compounds that were examined, only naphthalene exceeded the Leach Based Soil Values listed in Table 4. All other compounds which have derived leach based values, did not exceed the standards.

It should be noted that the compounds detected in the identified areas (acre areas SB-13 and SB-14) are compounds fairly typical of fuels and asphalt. The identified areas correspond to the locations of the gravel access road. The gravel road only exists along the neck of the peninsula at the present time. It is not surprising that the higher concentrations of chemical constituents occurred at these locations, since many trucks traveled down this gravel access road during the period when the filling operations occurred. Naphthalene is a constituent of asphalt or diesel fuel, and its presence is probably a residue of the truck traffic. Calculations of leaching of napthalene based on USEPA's "Soil Screening Guidance: Technical Background Document" indicate it is negligible on this property. The other volatiles and semivolatiles which were detected are also residues of asphalt or diesel fuel and these compounds are common along roadways at these concentrations.

2.4.2.3 Off Property Surface Water and Sediment Pathways

As there are no definitive streams or ditches on the peninsula, any migration of COCs from the soil must be accomplished by sheet flow. Therefore only the COCs in the upper foot or 1.5 foot of soil will be exposed to migration by surface water. The screening data and the VAP confirmatory data found only one acre area where COCs occurred in higher concentrations in the upper 3 feet of soil. This was the area where SB-14 was drilled. In this zone a number of semivolatile compounds were detected in concentrations ranging from 0.387 to 2.560 mg/kg, which are below the direct contact standards. These concentrations are fairly typical of those found along asphalt roadways. It is noted that the two areas that contained the higher concentrations in the peninsula were the location of the gravel and tar roadway which was used by the truck traffic hauling fill and dumping it on the peninsula (see Figure 6, Section F, Appendix 1). The planned use of the property calls for improvement and grading of this gravel pathway into a paved entry roadway, which have the practical effect of further isolating the COCs in the upper layers of soils from sheet flow migration to off property sediments and surface water. In addition, it was demonstrated that the toxicity from any emanation of soil via sheet flow from the Property is likely to be insignificant based on the low concentrations of chemicals of concern, low mobility of COCs, and comparisons to benchmarks.

Therefore, since the concentrations of COCs detected in the upper layer of soil exposed to sheet migration are below direct contact standards, as the semivolatiles detected are within a range typical of those found by an active paved roadbed, and since the surface area of the peninsula which contained COCs in the top 3 feet (acre area SB-14 only) is small (less than one acre) compared to the larger surface area of the peninsula and quarry, it is assumed any migration of COCs to off property surface water and sediment will be negligible. The planned construction/engineering improvements to the property will have the practical effect of further reducing the availability of the COCs in the upper soil layer to off property surface water and sediment migration.

2.4.3 Risk Assessment Findings

There is no risk assessment required for this property.

2.4.4 Determination of Whether Remedial Activities Are Required

There are no remedial activities required to achieve compliance with applicable standards.

2.5 REMEDIAL ACTIVITIES

There are no remedial activities planned or required at the property.

2.6 PLANNED OPERATION AND MAINTENANCE REMEDIES

No Operation and Maintenance activities, remedies, or plan is required as there are no remedial activities planned or required on the property. The intended use of the property is commercial building/development. A deed restriction will be utilized to limit the use of the Property to commercial and/or industrial land uses. No residential development will occur on the Property.

SECTION 3.0
CONCLUSIONS

The approximate seven acre peninsula is located in a former sand and gravel quarry west of downtown Columbus, Ohio. No structures are situated on the site. The Phase I and Phase II Property Assessments evaluated the peninsula and determined that the property is primarily construction fill. The construction fill contains low levels of volatile and semivolatile compounds typical of asphalt and other construction fill. These compounds comprised the chemicals of concern. An evaluation of exposure pathways determined the receptors to the restricted to construction workers, workers of the future office building(s), local residents using the peninsula for informal recreation, and flora and fauna that live on the peninsula and in the quarry. The chemicals of concern have not caused any apparent degradation in the environmental quality of the quarry and the surrounding area.

The proposed use of the peninsula is the building of a slab commercial building(s) and parking lot on the larger portion of the peninsula and the building of an access road on the narrow neck of the peninsula. A Warranty Deed has been submitted with the NFA form which will restrict the property to commercial use, and will be effective when a CNS is approved by the OEPA. The plans also include grading the areas under the flood plain with clean fill and grading other areas with clean fill for landscaping purposes. The planned activities will disturb the fill minimally and when completed, will provide further isolation of the construction fill from being a potential source for human and ecological receptors. It is on this basis that this "Brownfield" is a candidate for NFA.

OhioEPA
State of Ohio Environmental Protection Agency

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CERTIFIED MAIL

October 25, 2000

Mr. H. Burkley Showe
H2O Island L.L.C
1801 Watermark Drive
Columbus, Ohio 43215

RE: Issuance of Covenant Not To Sue for Watermark Peninsula off Watermark Drive
99NFA064

Dear : Mr. Showe:

I am happy to inform you that the Director of the Ohio Environmental Protection Agency ("Director") issued a Covenant Not To Sue ("Covenant") to H2O Island L.L.C., for the Watermark Peninsula, 1801 Watermark Drive, Columbus, Ohio on October 25, 2000. The Covenant was issued and subsequently made effective as Final Findings and Orders pursuant to Ohio Revised Code ("ORC") Chapter 3746 and the Ohio Administrative Code ("OAC") Chapter 3745-300. Many parties within the agency, H2O Island L.L.C. and R.D. Zande & Associates, Inc., worked hard to remove the environmental barriers associated with this site.

You will find the certified copy of the Covenant Not To Sue/Final Findings and Orders enclosed.

Upon the effective date of these Orders, and subject to the conditions outlined in the Covenant, the Ohio EPA hereby releases and covenants not to sue H2O Island L.L.C., and its agents, employees, shareholders, officers, directors, successors, or assigns, from all civil liability to the State of Ohio to perform additional investigational and/or remedial activities to address the releases of hazardous substances or petroleum identified in the Phase I and Phase II property assessment completed in accordance with ORC Chapter 3746 and OAC Chapter 3745-300.

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

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The Covenant is a final action of the Director, was not preceded by a proposed action, and is appealable to the Environmental Review Appeals Commission (ERAC), formerly the Environmental Board or Review. A final action which is not preceded by a proposed action may be appealed to the ERAC by filing an appeal within thirty (30) days of the issuance of the final action. The appeal must be in writing and set forth the action complained of and the grounds upon which the appeal is based. ERAC appeals must be filed with:

> Environmental Review Appeals Commission, 236 East Town Street, Room 300, Columbus, Ohio 43215.

A copy of the appeal must be served on the Director within 3 days after filing the appeal with the ERAC.

Again, congratulations on the issuance of this Covenant. If you have any questions or concerns, please feel free to contact me at 614-644-2924.

Sincerely,

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

encl.

cc: CO DERR-VAP Files
Mark Navarre, Legal Representative, VAP
Christopher W. Krumm, CP 177, R.D. Zande & Associates, Inc.