



Tamara K. Barger, Recorder  
 101 N. Main St., Rm. 203  
 Celina, OH 45822-1743  
 Phone: (419) 586-4232  
 Fax: (419) 586-3541

**\*18703\***

Print Date:  
 5/15/2009 3:53:37 PM

Transaction #: **18703**

Receipt #: **60229**

Cashier Date: 5/15/2009 3:58:2 (DIANA)

Customer Information	Transaction Information	Payment Summary
( ) FT RECOVERY INDUSTRIES  Attention: DEAN JETTER	Date Received: 05/15/2009 Source Code: Over the Counter Return Code: Over the Counter Trans Type: Recording Agent Ref Num:	Total Fees \$236.00 Total Payments \$236.00

1 Payments	
CHECK 136193	\$236.00

1 Recorded Items	
(MISC) MISC	Instrument #: 200900003771 Date: 5/15/2009 3:58:22 PM From: FORT RECOVERY INDUSTRIES INC To:
Reference \$4 Each	0 \$0.00
Recording Fee 1st 2 pgs=\$28, Each Additional=\$8	28 \$236.00

0 Search Items
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0 Miscellaneous Items
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OHIO E.P.A.

MAY -4 2009

INSTRUMENT # 200900003771  
Filed for Record in  
MERCER COUNTY, OHIO  
TAMARA K. BARGER  
05/15/09 At 03:58PM  
MISC, 28 Pages \$236.00

ENTERED DIRECTOR'S JOURNAL

To be recorded with Deed  
Records - ORC § 317.08

~~ENVIRONMENTAL COVENANT~~  
ENVIRONMENTAL COVENANT

This Environmental Covenant is entered into by *Fort Recovery Industries, Inc.* ("Owner") and the Ohio Environmental Protection Agency ("Ohio EPA") pursuant to Ohio Revised Code ("ORC") §§ 5301.80 to 5301.92 for the purpose of subjecting the Property to the activity and use limitations set forth herein.

Whereas, Owner is the owner of certain real property located at 2440 State Route 49, Fort Recovery, Ohio 45846 and legally described in Exhibit 1 attached hereto (collectively referred to herein as the "Property"); and

Whereas, as a result of past electroplating operations related to the finishing of zinc die castings at its facility in Fort Recovery, Ohio, certain contaminants were stored in hazardous waste surface impoundments and have been released at certain portions on the Property. These contaminants include, but are not limited to, copper, chromium, nickel and cyanide. Potential pathways of exposure from the contaminants located within these portions of the Property include industrial direct contact with soil and ground water as described in Exhibit 2 (Executive Summary).

Whereas, as a result of the contaminants identified above and the subsequent closure of the hazardous waste management units, Owner is implementing an approved post-closure plan on the Property in accordance with Ohio EPA's hazardous waste requirements contained in ORC Chapter 3734; and

Whereas, Owner submitted a *Risk Assessment to Support Early Termination of the Surface Impoundment Post-Closure Program* (early termination request), Owner has agreed to place certain restrictions on the future use of portions of the Property, as described herein; and

Whereas, the Administrative Record of the early termination request is maintained as the documents titled *Risk Assessment to Support Early Termination of the Surface Impoundment Post-Closure Program* and *April 22, 2008 Meeting, Fort Recovery Industries, Fort Recovery, Ohio* in the Ohio EPA Northwest District Office, 347 North Dunbridge Road, Bowling Green, Ohio; and

Whereas, the implementation of appropriate use restrictions that restrict land and shallow ground water use on the Property is required to protect human health and the environment, based upon a conceptual site model and a human health risk assessment performed for the hazardous waste management units addressed in the early termination request.

Now therefore, Owner and Ohio EPA agree to the following:

1. Environmental Covenant. This instrument is an environmental covenant developed and executed pursuant to ORC §§ 5301.80 to 5301.92.

2. Property. This Environmental Covenant concerns real property in Mercer County, Ohio and more particularly described in Exhibit 1 attached hereto and hereby incorporated by reference herein ("Property"). This Environmental Covenant also particularly concerns two tracts of said Property and more particularly described in Exhibit 1a and hereby incorporated by reference herein ("Industrial Tracts").

3. Owner. *Fort Recovery Industries, Inc.* ("Owner") is the owner of the Property. Owner is located at 2440 State Route 49, Fort Recovery, Ohio 45846.

4. Holders. Owner, whose address is listed above, is the holder of this Environmental Covenant. In the event of a future transfer of the Industrial Tracts such that Owner would no longer own the Industrial Tracts, Fort Recovery Industries, Inc. shall remain a Holder.

5. Activity and Use Limitations. As part of the early termination request for hazardous waste management units and ground water in the upper most saturated zone on the Property, Owner hereby imposes and agrees to comply with the following activity and use limitations:

A. The Industrial Tracts shall not be used for residential but may be used for industrial activities. The term "residential activities" shall include, but not be limited to, the following:

- (i) Single and multi-family dwelling and rental units;
- (ii) Day care centers and preschools;
- (iii) Hotels and motels;
- (iv) Educational (except as part of industrial activities within the Industrial Tracts) and religious facilities;
- (v) Restaurants and other food and beverage services (except as a part of industrial activities within the Industrial Tracts);
- (vi) Entertainment and recreational facilities (except as part of industrial activities within the Property);
- (vii) Hospitals and other extended care medical facilities; and
- (viii) Transient or other residential facilities.

The term "industrial activities" shall include manufacturing, processing operations and office and warehouse use, including but not limited to

production, storage and sales of durable goods and other non-food chain products and parking/driveway use.

- B. Ground water located in the upper most saturated zone within or upon the Property shall not be used except for investigation, monitoring or remediation purposes. There are no restrictions on the use of the deeper sand and gravel aquifer or the bedrock aquifer.
- C. In the event that any activity by the holder of an encumbrance on the Property, identified in paragraph 12 below, constitutes a violation of these activity and use restrictions, Owner or Transferee shall notify Ohio EPA within thirty (30) days of becoming aware of the event, and shall remedy the breach of the covenant within sixty (60) days of becoming aware of the event, or such other time frame as may be agreed to by the Owner or Transferee and Ohio EPA.

6. Running with the Land. This Environmental Covenant shall be binding upon the Owner and all assigns and successors in interest, including any Transferee, and shall run with the land, pursuant to ORC § 5301.85, subject to amendment or termination as set forth herein. The term "Transferee," as used in this Environmental Covenant, shall mean any future owner of any interest in the Property or any portion thereof, including, but not limited to, owners of an interest in fee simple, mortgagees, easement holders, and/or lessees.

7. Compliance Enforcement. Compliance with this Environmental Covenant may be enforced pursuant to ORC § 5301.91 or other applicable law. Failure to timely enforce compliance with this Environmental Covenant or the activity and use limitations contained herein by any party shall not bar subsequent enforcement by such party and shall not be deemed a waiver of the party's right to take action to enforce compliance. Nothing in this Environmental Covenant shall restrict the Director of Ohio EPA from exercising any authority under applicable law.

8. Rights of Access. Owner hereby grants to Ohio EPA, its agents, contractors, and employees and to Holder(s), the right of access to the Property for implementation or enforcement of this Environmental Covenant.

9. Compliance Reporting. Owner and any Transferee shall submit to Ohio EPA and Holder(s) on an annual basis a written certification which complies with the requirements of Ohio Administrative Code rule 3745-50-42(B), (C), and (D) that the activity and use limitations remain in place and are being complied with.

10. Recordation of Environmental Covenant. Within thirty (30) days after the date of the final required signature upon this Environmental Covenant, Owner shall

record, in the office of the Mercer County Recorder, this Environmental Covenant in the same manner as a deed to the Property, pursuant to ORC § 5301.88. Owner shall certify to Ohio EPA that the Environmental Covenant has been filed for recording, and include with the certification a file and date-stamped copy of the Environmental Covenant.

11. Notice upon Conveyance. Each instrument hereafter conveying any interest in the Property or any portion of the Property shall contain a notice of the activity and use limitations set forth in this Environmental Covenant, and provide the recorded location of this Environmental Covenant. The notice shall be substantially in the following form:

THE INTEREST CONVEYED HEREBY IS SUBJECT TO AN ENVIRONMENTAL COVENANT, DATED \_\_\_\_\_, 200\_, RECORDED IN THE DEED OR OFFICIAL RECORDS OF THE MERCER COUNTY RECORDER ON \_\_\_\_\_, 200\_, IN [DOCUMENT \_\_\_\_\_, or BOOK \_\_\_\_\_, PAGE \_\_\_\_\_]. THE ENVIRONMENTAL COVENANT CONTAINS THE FOLLOWING ACTIVITY AND USE LIMITATIONS:

The Industrial Tracts shall not be used for residential activities but may be used for industrial activities. The term "residential activities" shall include, but not be limited to, the following:

- (a) Single and multi-family dwelling and rental units;
- (b) Day care centers and preschools;
- (c) Hotels and motels;
- (d) Educational (except as part of industrial activities within the Industrial Tracts) and religious facilities;
- (e) Restaurants and other food and beverage services (except as a part of industrial activities within the Industrial Tracts);
- (f) Entertainment and recreational facilities (except as part of industrial activities within the Industrial Tracts);
- (g) Hospitals and other extended care medical facilities; and
- (h) Transient or other residential facilities.

The term "industrial activities" shall include manufacturing, processing operations and office and warehouse use, including but not limited to production, storage and sales of durable goods and other non-food chain products and parking/driveway use.

Ground water located in the upper most saturated zone within or upon the Property shall not be used except for investigation, monitoring or

remediation purposes. There are no restrictions on the use of the deeper sand and gravel aquifer or the bedrock aquifer.

In the event that any activity by the holder of an encumbrance on the Property, identified in paragraph 12 below, constitutes a violation of these activity and use restrictions, Owner or Transferee shall notify Ohio EPA within thirty (30) days of becoming aware of the event, and shall remedy the breach of the covenant within sixty (60) days of becoming aware of the event, or such other time frame as may be agreed to by the Owner or Transferee and Ohio EPA.

Owner shall notify Ohio EPA within ten (10) days after each conveyance of an interest in any portion of the Property. Owner's notice shall include the name, address, and telephone number of the Transferee, a copy of the deed or other documentation evidencing the conveyance, a legal description of the Property being transferred, a survey map of the Property being transferred, and the closing date of the transfer of ownership of the Property.

12. Representations and Warranties. Owner hereby represents and warrants to the other signatories hereto:

- A. that the Owner is the sole owner of the Property;
- B. that the Owner holds fee simple title to the Property which is subject to the interests or encumbrances listed and described in Exhibit 3 attached hereto, which is fully incorporated by reference herein;
- C. that the Owner has the power and authority to enter into this Environmental Covenant, to grant the rights and interests herein provided and to carry out all obligations hereunder;
- D. that the Owner has identified all other parties, identified Exhibit 3, described above, that hold any interest (e.g., encumbrance) in the Industrial Tracts and has made reasonable efforts to notify those parties most likely to be affected by the Owner's intention to enter into this Environmental Covenant; and
- E. that this Environmental Covenant will not materially violate or contravene or constitute a material default under any other agreement, document or instrument to which Owner is a party or by which Owner may be bound or affected.

13. Amendment or Termination. This Environmental Covenant may be amended or terminated by consent of all of the following: the Owner or a Transferee, the Holder, and the Ohio EPA, pursuant to ORC § 5301.90 and other applicable law. Amendment means any changes to the Environmental Covenant, including the activity and use limitations set forth herein, or the elimination of one or more activity and use limitations when there is at least one limitation remaining. Termination means the elimination of all activity and use limitations set forth herein and all other obligations under this Environmental Covenant.

This Environmental Covenant may be amended or terminated only by a written instrument duly executed by the Director of Ohio EPA and the Owner or Transferee and the Holder of the Property or portion thereof, as applicable. Within thirty (30) days of signature by all requisite parties on any amendment or termination of this Environmental Covenant, the Owner or Transferee shall file such instrument for recording with the Mercer County Recorder's Office, and shall provide a true file and date-stamped copy of the recorded instrument to Ohio EPA.

14. Severability. If any provision of this Environmental Covenant is found to be unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired.

15. Governing Law. This Environmental Covenant shall be governed by and interpreted in accordance with the laws of the State of Ohio.

16. Effective Date. The effective date of this Environmental Covenant shall be the date upon which the fully executed Environmental Covenant has been recorded as a deed record for the Property with the Mercer County Recorder.

17. Distribution of Environmental Covenant. The Owner shall distribute copies of the recorded Environmental Covenant to: Ohio EPA, any lessee, each person who signed the Environmental Covenant, each person holding a recorded interest in the Property, each unit of local government in which the Property is located, and any other person designated by Ohio EPA.

18. Notice. Any document or communication required by this Environmental Covenant shall be submitted to:

Ohio Environmental Protection Agency  
Division of Hazardous Waste Management  
Lazarus Government Center  
P.O. Box 1049  
Columbus, Ohio 43216-1049

and

Ohio Environmental Protection Agency  
Division of Hazardous Waste Management  
Northwest District Office  
347 North Dunbridge  
Bowling Green, Ohio 43402

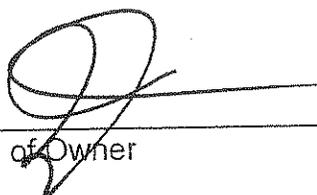
and

Fort Recovery Industries, Inc.  
2440 State Route 49  
Fort Recovery, Ohio 45846

The undersigned representative of Fort Recovery Industries, Inc. represents and certifies that he is authorized to execute this Environmental Covenant.

IT IS SO AGREED:

Fort Recovery Industries, Inc.



Signature of Owner

WESLEY M. JETTER  
Printed Name and Title CHAIRMAN  
+ CEO

15 APR 09  
Date

State of OHIO )  
County of MERCER )

ss:

Before me, a notary public, in and for said county and state, personally appeared, a duly authorized representative of Fort Recovery Industries, Inc., who acknowledged to me that [he/she] did execute the foregoing instrument on behalf of Fort Recovery Industries, Inc.

IN TESTIMONY WHEREOF, I have subscribed my name and affixed my official seal this 15<sup>th</sup> day of APRIL, 2009.

Gayetta Hogan  
Notary Public

SEAL

GAYETTA HOGAN, Notary Public  
in and for the State of Ohio  
My Commission Expires March 6, 2011

GAYETTA HOGAN, Notary Public  
in and for the State of Ohio  
My Commission Expires March 6, 2011

OHIO ENVIRONMENTAL PROTECTION AGENCY

  
Chris Korleski, Director

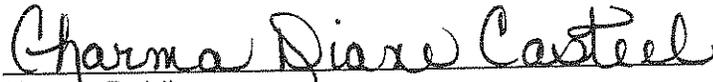
4/29/09  
Date

State of Ohio)

County of Franklin ) ss:

Before me, a notary public, in and for said county and state, personally appeared **CHRIS KORLESKI**, the Director of Ohio EPA, who acknowledged to me that he did execute the foregoing instrument on behalf of Ohio EPA.

IN TESTIMONY WHEREOF, I have subscribed my name and affixed my official seal this 29<sup>th</sup> day of APRIL, 2009.

  
Notary Public

CHARMA DIANE CASTEEL  
NOTARY PUBLIC  
STATE OF OHIO  
MY COMMISSION EXPIRES

May 10, 2009



This instrument prepared by:

Todd Anderson, Esq.  
Ohio Environmental Protection Agency  
50 West Town Street  
Suite 700  
Columbus, Ohio 43215

**Exhibit 1**

## EXHIBIT 1

### TRACT I:

Situated in the Township of Recovery, County of Mercer and State of Ohio, to-wit:

Situated in the northwest quarter of Section 20, T(1)(E), R(7)(S) and described as follows:

Beginning at a point in center of State Route 49, 300 feet south of the northwest corner of Section 20, Recovery Township, Mercer County, Ohio. Being the southwest corner of the American Legion property (Emmet Mannix Post) running thence east on a line parallel with the north section line 650 feet to a point, thence running south 0 degrees, 15 minutes east 550 feet, thence running west on a line parallel with the north line 650 feet to the center of State Route 49, thence north 0 degrees, 15 minutes west on center line of said road 550 feet to the place of beginning, tract contains 8.2069 acres.

Prior Instrument Reference: Volume 202, Page 478.

### TRACT II:

Being a parcel of land situated in the Village of Fort Recovery and also being in Recovery Township, Mercer County, Ohio, in the West part of Section 20, Township 7 South, Range 1 East, being more-particularly described as follows:

Commencing for reference at the corner stone at the northwest corner of said Section 20; thence North 89° 58' East, along the north line of said Section 20, a distance of One Thousand Two Hundred Ninety-two and 64/100 (1292.64) feet to a point; thence, South 06° 22' 50" West, a distance of One Thousand One Hundred Sixty-Two and 42/100 (1162.42) feet to a patent survey stake on the north right-of-way of Lost Road; thence, South 77° 03' 53" West, along said north right-of-way line of Lost Road a distance of One Hundred Sixty-four (164.00) feet to a 5/8 inch iron bar; thence continuing along the north right-of-way line of Lost Road, South 71° 12' 38" West, a distance of One Hundred ninety-two and 98/100 (192.98) feet to a 5/8 inch iron bar, said point being the place of beginning for the parcel to be conveyed by this instrument; thence, continuing South 71° 12' 38" West, along said north right-of-way line of Lost Road, a distance of forty-five and 42/100 (45.42) feet to a 5/8 inch iron bar; thence, north 31° 39' 04" West, a distance of Two Hundred and 08/100 (200.08) feet to a 5/8 inch iron bar; thence, North 64° 45' 18" East, along the corporation line of the Village of Fort Recovery, a distance of thirty-eight and 52/100 (38.52) feet to a patent survey stake; thence, South 33° 19' 07" East, a distance of Two Hundred Five and 98/100 (205.98) feet to the place of beginning.

Containing 0.192 acre of land, more or less, subject to all easements and right-of-way of record.

Reference is made to a survey of this area by Gordon L. Geeslin, Registered Surveyor 5372, dated October 17, 1985 on file in the County Engineer's Office.

Prior Instrument Reference: Volume 298, Page 287.

TRACT III:

A tract of land located in the NW 1/4, Section 20, T7S-R1e, Recovery Township, Mercer County, Ohio, taken out of a 30.804 acre tract as surveyed and platted by Thomas Sheldon Registered Surveyor #4620 and more fully described from the above plat of survey as follows:

Beginning at a point on the west line of tract #1, said point being N 89° 58' E, 1292.64 feet from a stone at the NW corner of Section 20;

Thence S 6° 22' 50" W, 301.89 feet to a wood stake, the beginning point for this description;

Thence S 6° 22' 50" W, 555.28 feet along the west line of tract #1 to an iron pipe;

Thence S 64° 49' 30" W, 400.88 feet to an iron survey stake; Thence S 64° 50' W, 286.40 feet to an iron survey marker;

Thence S 43° 54' W, 336.75 feet to an iron survey pin set on the center line of State Route #49;

Thence N 44° 24' W, 216.58 feet to a point; Thence N 36° 53' W, 307.49 feet to a point;

Thence N 0° 17' E, 133.89 feet to a point on the center line of State Route #49.

Thence N 89° 58' E, 650 feet along the south line of Ft. Recovery Industries Land to a wood corner post, being the SE corner of the Ft. Recovery Industries Tract.

Thence N 0° 17' W, 550 feet along the east line of the Ft. Recovery Industries tract to a 2" steel rod, being the NE corner of the Fort Recovery Industries tract;

Thence N 89° 58' E, 606.70 feet to point of beginning.

Tract contains 14.254 acres subject to the right of way of State Route #49. This Tract embraces all the land remaining after tracts 1, 2 and 3 are taken out of the 30.804 acre tract as shown by the Sheldon survey and plat, and as shown upon a revised plat of survey made by B. R. Gebhart, registered surveyor #3909.

TRANSFER NOT NECESSARY

Acreage by Latitudes and departures.

MAY 15 2009

Prior Instrument Reference: Volume 212, Page 288.

MARK GIESIGE  
COUNTY AUDITOR  
MERCER COUNTY, OHIO

Parcel #(s): 38-033300.0000 and 39-007100.0200  
map #(s): 10-20-101-002 and 10-20-101-004



**Exhibit 1a**

AFFIDAVIT IN AID OF TITLE  
OHIO REVISED CODE SECTION 5301.252

VOL

3 PAGE 690

The undersigned, Wesley M. Jetter, the President of Fort Recovery Industries, Inc., being first duly sworn, deposes and says that it is the owner of the premises described on Exhibit A attached hereto and made a part hereof (the "Land"); that the Land has been used to manage hazardous wastes; and that the use of the Land is restricted under 40 CFR Subpart G regulations and under the Ohio Administrative Code closure and postclosure rules; and that the survey plat of the Land as required by the Fort Recovery Industries Closure Plan, approved by the United States Environmental Protection Agency on October 4, 1988 and the Ohio Environmental Protection Agency on February 2, 1989, has been filed with the Mercer County Commissioner's Office (the local zoning authority or the authority with jurisdiction over local land use), with the Regional Administrator of Region V of the United States Environmental Protection Agency, and with the Director of the Ohio Environmental Protection Agency.

This Affidavit is delivered in order to comply with 40 CFR Section 265.119(b), Code of Federal Regulations, and Rule 3745-66-19 of the Ohio Administrative Code, in order to notify any potential purchaser of the Land of the facts contained herein.

Further affiant sayeth naught.

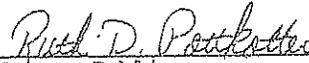
  
\_\_\_\_\_

Wesley M. Jetter

STATE OF OHIO )  
                  ) SS:  
COUNTY OF Mercer )

Sworn to before me and subscribed in my presence this 30<sup>th</sup> April, 1992.



  
\_\_\_\_\_  
Notary Public

RUTH D. POTTKOTTER  
NOTARY PUBLIC, STATE OF OHIO  
MY COMMISSION EXPIRES JAN. 1, 1995

Instrument Prepared By: Elizabeth E. Tulman, Esq.  
Vorys, Sater, Seymour and Pease  
52 East Gay Street  
P.O. Box 1008  
Columbus, Ohio 43216-1008

EXHIBIT A

TRACT ONE

VOL. 3 PAGE 691

Being a parcel of land situated in Recovery Township, Mercer County, Ohio, in the northwest quarter of Section 20, Township 7 South, Range 1 East. Being more particularly described as follows:

Commencing for reference at a 5/8 inch iron bar at the northwest corner of said Section 20-

Thence, south 89°57'39" east, along the north line of the northwest quarter of said Section 20, a distance of one thousand two hundred ninety-two and 64/100 (1292.64) feet to a point-

Thence, south 06°37'38" west, a distance of eight hundred fifty-three and 76/100 (853.76) feet to an iron pipe at the northeast corner of a tract of land conveyed to Wayne Oil Company by deed recorded in Deed Volume 279, page 769-

Thence, north 63°28'00" west, a distance of three hundred forty-nine and 99/100 (349.99) feet to a 5/8 inch iron bar. Said point being the place of beginning for the herein described parcel-

Thence, south 78°46'19" west, a distance of one hundred thirty-four and 31/100 (134.31) feet to a 5/8 inch iron bar-

Thence, south 87°22'28" west, a distance of sixty-four and 29/100 (64.29) feet to a 5/8 inch iron bar-

Thence, north 31°40'02" west, a distance of seventy-two and 85/100 (72.85) feet to a 5/8 inch iron bar-

Thence, north 0°38'11" east, a distance of one hundred nineteen and 62/100 (119.62) feet to a 5/8 inch iron bar-

Thence, south 75°17'28" east, a distance of forty-one and 32/100 (41.32) feet to a 5/8 inch iron bar-

Thence, south 59°25'46" east, a distance of one hundred thirty-five and 29/100 (135.29) feet to a 5/8 inch iron bar-

Thence, south 87°10'58" east, a distance of twenty-nine and 40/100 (29.40) feet to a 5/8 inch iron bar-

Thence, south 53°05'04" east, a distance of fifty-eight and 45/100 (58.45) feet to a 5/8 inch iron bar-

Thence, south 0°31'07" east, a distance of thirty-six and 66/100 (36.66) feet to the place of beginning.

Containing 0.612 acres of land more or less.

TRACT TWO

Being a parcel of land situated in Recovery Township, Mercer County, Ohio, in the northwest quarter of Section 20, Township 7 South, Range 1 East. Being more particularly described as follows:

Commencing for reference at a 5/8 inch iron bar at the northwest corner of said Section 20-

Thence, south 89°57'39" east, along the north line of the northwest quarter of said Section 20, a distance of one thousand two hundred ninety-two and 64/100 (1292.64) feet to a point-

Thence, south 06°37'38" west, a distance of eight hundred fifty-three and 76/100 (853.76) feet to an iron pipe at the northeast corner of a tract of land conveyed to Wayne Oil Company by deed recorded in Deed Volume 279, page 769-

Thence, north 86°56'44" west, a distance of four hundred fifty-two and 75/100 (452.75) feet to a 5/8 inch iron bar. Said point being the place of beginning for the herein described parcel-

Thence, north 86°23'02" west, a distance of ninety-eight and 38/100 (98.38) feet to a 5/8 inch iron bar-

Thence, south 03°56'05" west, a distance of twenty-four and 81/100 (24.81) feet to a 5/8 inch iron bar-

Thence, south 83°57'11" west, a distance of seventy-eight and 89/100 (78.89) feet to a 5/8 inch iron bar-

Thence, south 0°25'34" west, a distance of forty-six and 90/100 (46.90) feet to a 5/8 inch iron bar-

Thence, south 32°06'09" east, a distance of seventy and 65/100 (70.65) feet to a 5/8 inch iron bar-

Thence, north 72°28'06" east, a distance of one hundred forty-eight and 03/100 (148.03) feet to a 5/8 inch iron bar-

Thence, north 0°00'15" west, a distance of eighty-nine (89.00) feet to the place of beginning.

Containing 0.415 acres of land more or less.

36201

PRESENTED FOR RECORD  
In the 14 day of May 1992  
at 3:35 o'clock P M  
recorded May 15 1992  
in Mercer Co, Ohio, Record of  
Affidavit  
Patricia E. Gaste  
RECORDER - MERCER, CO, OH

Vol. 3 pg. 690-92  
Fees \$12.00  
Mail to: Perryway Industrial  
2440 St. Rt 49  
St. Clairsville, OH  
ATT: Steve Jette.

**Exhibit 2**

## Executive Summary

Fort Recovery Industries, Inc. (FRI) manufactures zinc and aluminum die cast components for plumbing, appliances and the auto industry at its facility in Fort Recovery, Ohio. The main hazardous waste generated at FRI is sludge from the treatment of electroplating process wastes. The main hazardous constituents found in the waste sludge include copper, chromium, nickel and cyanide. Treatment of this waste includes chromium reduction, cyanide destruction, neutralization and precipitation processes. Prior to 1986, electroplating waste was discharged to Resource Conservation and Recovery Act (RCRA) regulated surface impoundments. Closure of the electroplating waste impoundments began on October 24, 1985 and closure certification was accepted by Ohio EPA in March 1992.

As part of the closure implementation, post-excavation soil sampling and analysis was conducted in accordance with the approved Closure Plan (FRI 1988) at locations beneath and adjacent to the lagoons. The results for the post-excavation samples were compared with the background levels defined according to the Closure Plan. Based on evaluation of the closure sampling results, FRI elected to modify the closure approach from clean closure to in-place "landfill" closure (Pace 1992). The landfill closure components included installation of a composite cap over the excavated lagoons and adjacent areas where residual concentrations in soils were higher than the specified Removal Limits<sup>1</sup>. The five sludge lagoons and an adjacent spill area were certified landfill closed by Ohio EPA in March 1992. Subsequently, FRI initiated its post-closure care obligations for the closed units. Post-closure is currently performed in accordance with the approved Amended Baseline Modified Post-Closure Plan, Fort Recovery Industries, Inc., Fort Recovery, Ohio [BMPCP, SAIC, Inc. (SAIC) 2008a]. In addition, FRI is currently conducting corrective action monitoring related to a response to groundwater concentrations exceeding limits specified in the BMPCP.

In consultation with Ohio EPA, FRI has prepared a request for early termination of post-closure in accordance with OAC 3745-66-18(G), as provided for under OAC 3745-66-17(A)(2), which says that the director may shorten the post-closure care period applicable to the hazardous waste management unit if he finds that the reduced period is sufficient to protect human health and the environment. To support this request, a site-specific risk assessment has been conducted using data collected as part of the Ohio EPA-approved closure and post-closure sampling activities.

To streamline a portion of the site-specific risk assessment, potential risks associated with current and reasonably expected future on-site direct contact soil exposures associated with continued industrial operations were conservatively evaluated using exposure factors for unrestricted (i.e., residential) land use. This hypothetical scenario for residential exposure to

<sup>1</sup> The removal limits were defined as ten times the average background concentration or one thousand times the drinking water standards, whichever was highest (FRI 1985, rev. 1988). For areas remaining outside the cap, the soil was removed until verification sampling results were at or below background concentrations (Pace 1992).

soil was evaluated following procedures outlined in Ohio EPA's Closure Plan Review Guidance (CPRG) for RCRA Facilities (Ohio EPA 2008). The hypothetical residential risk estimates meet the acceptable risk goals defined in the CPRG, thus indicating that continued closure/post-closure actions or land use controls are not necessary to address soils remaining within the limits of the regulated units.

The significance of potential exposure to constituents in shallow groundwater at the Site was evaluated using the post-closure groundwater monitoring data and site-specific exposure assessment of potential vapor intrusion into indoor air, incidental direct contact with shallow groundwater, and groundwater migration from a shallow water bearing zone to a deeper potable aquifer. This assessment determined that shallow groundwater beneath the regulated units is not reasonably likely to be used for potable use, and the results of the evaluation of reasonably likely current and future exposures using maximum detected concentrations in shallow groundwater from the last two years of monitoring meet the acceptable risk goals. These results indicate that continued closure/post-closure actions are not necessary to address shallow groundwater beneath the regulated units.

Therefore, this risk-assessment supports the determination that it is not necessary to continue to apply the closure/post-closure and corrective action requirements because the completed closure activities are protective of human health and the environment.

**Table 1: Conceptual Site Model**

Site Setting

- FRI is located in a remote area of western Ohio
  - Land use surrounding the facility is primarily agricultural, however, there are no agricultural operations immediately downgradient of the FRI facility
  - Neighboring properties are non-residential (i.e., no residential developments), and include industrial and commercial businesses and agricultural
  - FRI plans to continue manufacturing operations, with the possibility of constructing new facilities
    - Expand existing manufacturing building
    - Add a new warehouse building & new parking
- Lithologic borings from on-site well installation indicate that unconsolidated soils extend to a depth of at least 50 to 60 ft bgs
  - Overburden consists primarily of silt and clay with some discontinuous lenses of sand and gravel
  - Strata are characterized as an upper (shallow) and lower (deeper) saturated zones separated by a layer of silty clay
    - Shallow zone: brown silt and clay extending from ground surface to 19 ft bgs, with a basal portion consisting of gray silt, silty clay, and clay with varying saturated sand stringers of less than 6-inches of poorly sorted sands and gravels at a depth of 14.5 to 30 ft
    - Confining clay layer: dark grayish brown silty clay ranging in depth of 18 to 45 ft bgs
    - Deeper zone: encountered at a depth of 44 to 48 ft bgs consisting of brown sand and gravel
- The main regional aquifer is the limestone and dolomite of the Niagaran Series
  - First encountered bedrock unit beneath overburden units
  - Yields of 400 gpm have been reported
  - Most local residents are on a community water supply; municipal water is derived from wells that are more than one mile south of the FRI facility and which draw from a depth of 165 feet bgs
  - Most domestic wells in the area draw water from the limestone and dolomite aquifer
  - The shallow saturated zone is not used as a water source

Conceptual Site Model

- Soils:
  - Site will remain as active industrial operation
  - Potential Current Exposures to soils -
    - Maintenance/landscaper exposures (Maintenance Workers)
  - Potential Future Exposures to soils (assuming facility expansion over capped soils) -
    - Development construction workers (Construction Workers)
    - Occasional utility excavation workers (Maintenance Workers)
    - Maintenance/landscaper exposures (Maintenance Workers)
    - Off-site receptors via windblown dust (Residents)
  - Potential Migration to shallow nonpotable groundwater
- Groundwater:
  - Shallow water bearing zone is not used for water supply
  - Potential Current Exposures to shallow groundwater -
    - Occasional utility excavation workers (Maintenance Workers)
  - Potential Future Exposures to shallow groundwater (with facility expansion) -
    - Development construction workers (Construction Workers)
    - Occasional utility excavation workers (Maintenance Workers)
    - Routine workers via vapor intrusion to buildings (Routine Workers)
  - Potential Migration to deeper potable groundwater

## 5 References

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**Exhibit 3**

**TO: FORT RECOVERY INDUSTRIES, INC.**

**OWNER'S TITLE CERTIFICATE**

The undersigned hereby certifies that he has made a thorough examination of the records of Mercer County, Ohio, as disclosed by the public indexes in accordance with the Ohio Marketable Title Act, relating to the premises hereinafter described in Item I. This examination commenced with: (1) Tract I: a Warranty Deed from Esther M. Jetter & George G. Jetter, husband and wife, to Jetter Real Estate Company, filed for record on November 3, 1960, at Volume 202, Page 478 of the Mercer County Deed Records and continued to the date hereof; (2) Tract II (identified as Tract 3 on the Limited Warranty Deed recorded in Volume 301, Page 611 on the Deed Records of Mercer County, Ohio): a Warranty Deed from Clair L. Kelly, married, to Paul Shannon, filed for record on January 17, 1962, at Volume 207, Page 181 of the Mercer County Deed Records and continued to the date hereof; (3) Tract III (identified as Tract 4 on the Limited Warranty Deed recorded in Volume 301, Page 611 on the Deed Records of Mercer County, Ohio): a Warranty Deed from Marguerite B. Davidson (Reuter), married to Francis H. Davidson, and Helen E. Hanni (Reuter), married to John W. Hanni, to Jetter Real Estate Inc., filed for record on August 26, 1963, at Volume 212, Page 288 of the Mercer County Deed Records and continued to the date hereof.

This certificate does not purport to cover matters not of record in the County, including rights of persons in possession, questions which a correct survey or inspection would disclose, rights to file mechanics' liens, special taxes and assessments not shown by the County Treasurer's records, zoning and other governmental regulations, or liens asserted by the United States or State of Ohio, their agencies and officers under the Ohio Solid Hazardous Waste Disposal Act, Federal Superfund Amendments, and under Racketeering Influence and Corrupt Organization Acts and Receivership Liens, unless the lien is filed in the public records of the county in which the premises is located.

The undersigned hereby certifies that, in his opinion based upon the records, the fee simple title to the premises is vested in Fort Recovery Industries, Inc., an Ohio corporation, by virtue of a Limited Warranty Deed from Jetter Real Estate Company, an Ohio corporation, dated December 29, 1986, filed for record December 30, 1986, and recorded in Volume 301, Page 611 of the Deed Records of Mercer County, Ohio; and that as appears from the records, the title is marketable and free from encumbrances except and subject to the matters set forth in the following Items II, III, IV, V, VI, VII, VIII, IX, and X.

ITEM I See attached Exhibit "A".

ITEM II Real Estate Taxes: Parcel Number: 38-033300.0000 (22.450 acres)  
Tax Valuation: \$1,573,460  
Taxes Per Half: \$10,724.72-1<sup>st</sup> half\*; \$10,718.20 2<sup>nd</sup> half  
Taxes paid through the July, 2008 installment

Parcel Number: 39-007100.0200 (0.1920 acres)  
Tax Valuation: \$2,850  
Taxes Per Half: \$24.45-1<sup>st</sup> half\*; \$24.25 2<sup>nd</sup> half  
Taxes paid through the July 2008 installment

\* Assessments: Wabash Conservancy \$6.52 1<sup>st</sup> half only (Tracts I & III)  
Wabash Conservancy \$0.20 1<sup>st</sup> half only (Tract II)

ITEM III An Easement from Mildred M. Stevenson and Marguerite B. Davidson, to State of Ohio, filed for record September 26, 1952, and recorded in Volume 165, Page 40, of the Deed Records of Mercer County, Ohio. A copy of the Easement is attached hereto. NOTE: This Easement pertains to Tracts I and III only.

ITEM IV An Easement from Clair L. Kelly, to State of Ohio, filed for record October 8, 1952, and recorded in Volume 165, Page 45, of the Deed Records of Mercer County, Ohio. A copy of the Easement is attached hereto. NOTE: This Easement pertains to Tract II only.

ITEM V An Easement from Jetter Real Estate Co., to General Telephone Company of Ohio, an Ohio corporation, filed for record June 26, 1972, and recorded in Volume 236, Page 685, of the Deed Records of Mercer County, Ohio. A copy of the Easement is attached hereto. NOTE: This Easement pertains to Tracts I and III only.

- ITEM VI An Easement from Fort Recovery Industries, Inc., to West Ohio Gas Company, an Ohio corporation, filed for record January 10, 1991, and recorded in Volume 318, Page 221, of the Deed Records of Mercer County, Ohio. A copy of the Easement is attached hereto. NOTE: This Easement pertains to Tract I only.
- ITEM VII Any matters shown in the Affidavit In Aid of Title filed for record May 14, 1992, and recorded in Volume 3, Page 690, of the Affidavit Records of Mercer County, Ohio. A copy of the Affidavit is attached hereto. NOTE: This Affidavit appears to pertain to Tract III only.
- ITEM VIII Any matters shown on the Fort Recovery Industries Survey dated May 14, 1988. A copy of the Survey is attached hereto.
- ITEM IX Any matters shown on the Stevenson Survey dated January 10, 1963. A copy of the Survey is attached hereto.
- ITEM X Any matters shown on the Cheeseman Trucking Company Survey dated October 17, 1985. A copy of the Survey is attached hereto.

Dated at Sidney, Ohio, this 23<sup>rd</sup> day of January, 2009, at 8:00 a.m.

FAULKNER, GARMHAUSEN, KEISTER & SHENK  
A Legal Professional Association

By: \_\_\_\_\_

John M. Garmhausen

## EXHIBIT "A"

### TRACT I:

Situated in the Township of Recovery, County of Mercer and State of Ohio, to-wit:

Situated in the northwest quarter of Section 20, T(1)(E), R(7)(S) and described as follows:

Beginning at a point in center of State Route 49, 300 feet south of the northwest corner of Section 20, Recovery Township, Mercer County, Ohio. Being the southwest corner of the American Legion property (Emmet Mannix Post) running thence east on a line parallel with the north section line 650 feet to a point, thence running south 0 degrees, 15 minutes east 550 feet, thence running west on a line parallel with the north line 650 feet to the center of State Route 49, thence north 0 degrees, 15 minutes west on center line of said road 550 feet to the place of beginning, tract contains 8.2069 acres.

Prior Instrument Reference: Volume 202, Page 478.

### TRACT II:

Being a parcel of land situated in the Village of Fort Recovery and also being in Recovery Township, Mercer County, Ohio, in the West part of Section 20, Township 7 South, Range 1 East, being more-particularly described as follows:

Commencing for reference at the corner stone at the northwest corner of said Section 20; thence North 89° 58' East, along the north line of said Section 20, a distance of One Thousand Two Hundred Ninety-two and 64/100 (1292.64) feet to a point; thence, South 06° 22' 50" West, a distance of One Thousand One Hundred Sixty-Two and 42/100 (1162.42) feet to a patent survey stake on the north right-of-way of Lost Road; thence, South 77° 03' 53" West, along said north right-of-way line of Lost Road a distance of One Hundred Sixty-four (164.00) feet to a 5/8 inch iron bar; thence continuing along the north right-of-way line of Lost Road, South 71° 12' 38" West, a distance of One Hundred ninety-two and 98/100 (192.98) feet to a 5/8 inch iron bar, said point being the place of beginning for the parcel to be conveyed by this instrument; thence, continuing South 71° 12' 38" West, along said north right-of-way line of Lost Road, a distance of forty-five and 42/100 (45.42) feet to a 5/8 inch iron bar; thence, north 31° 39' 04" West, a distance of Two Hundred and 08/100 (200.08) feet to a 5/8 inch iron bar; thence, North 64° 45' 18" East, along the corporation line of the Village of Fort Recovery, a distance of thirty-eight and 52/100 (38.52) feet to a patent survey stake; thence, South 33° 19' 07" East, a distance of Two Hundred Five and 98/100 (205.98) feet to the place of beginning.

Containing 0.192 acre of land, more or less, subject to all easements and right-of-way of record.

Reference is made to a survey of this area by Gordon L. Geeslin, Registered Surveyor 5372, dated October 17, 1985 on file in the County Engineer's Office.

Prior Instrument Reference: Volume 298, Page 287.

TRACT III:

A tract of land located in the NW 1/4, Section 20, T7S-R1e, Recovery Township, Mercer County, Ohio, taken out of a 30.804 acre tract as surveyed and platted by Thomas Sheldon Registered Surveyor #4620 and more fully described from the above plat of survey as follows:

Beginning at a point on the west line of tract #1, said point being N 89° 58' E, 1292.64 feet from a stone at the NW corner of Section 20;

Thence S 6° 22' 50" W, 301.89 feet to a wood stake, the beginning point for this description;

Thence S 6° 22' 50" W, 555.28 feet along the west line of tract #1 to an iron pipe;

Thence S 64° 49' 30" W, 400.88 feet to an iron survey stake; Thence S 64° 50' W, 286.40 feet to an iron survey marker;

Thence S 43° 54' W, 336.75 feet to an iron survey pin set on the center line of State Route #49;

Thence N 44° 24' W, 216.58 feet to a point; Thence N 36° 53' W, 307.49 feet to a point;

Thence N 0° 17' E, 133.89 feet to a point on the center line of State Route #49.

Thence N 89° 58' E, 650 feet along the south line of Ft. Recovery Industries Land to a wood corner post, being the SE corner of the Ft. Recovery Industries Tract.

Thence N 0° 17' W, 550 feet along the east line of the Ft. Recovery Industries tract to a 2" steel rod, being the NE corner of the Fort Recovery Industries tract;

Thence N 89° 58' E, 606.70 feet to point of beginning.

Tract contains 14.254 acres subject to the right of way of State Route #49. This Tract embraces all the land remaining after tracts 1, 2 and 3 are taken out of the 30.804 acre tract as shown by the Sheldon survey and plat, and as shown upon a revised plat of survey made by B. R. Gebhart, registered surveyor #3909.

Acreage by Latitudes and departures.

Prior Instrument Reference: Volume 212, Page 288.

Parcel #(s): 38-033300.0000 and 39-007100.0200  
Map #(s): 10-20-101-002 and 10-20-101-004

TRANSFER NOT NECESSARY

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MAY 15 2009

MARK GIESIGE  
COUNTY AUDITOR

