



John R. Kasich, Governor
Mary Taylor, Lt. Governor
Scott J. Nally, Director

AUG 13 2013

CERTIFIED MAIL

91 7199 9991 7030 4725 2875

Mr. Stuart Moynihan
Economic Development Coordinator
Department of Development
City of Newark
40 West Main Street
Suite 407
Newark, Ohio 43055

**RE: Issuance of Covenant Not To Sue for the Newark Processing Site Property
(12NFA481)
Project ID #145-001724-014**

Dear Mr. Moynihan:

AUG 13 2013

I am pleased to inform you that on _____, the Director of the Ohio Environmental Protection Agency issued a covenant not to sue (CNS) to the City of Newark, Ohio, for the Newark Processing Site property, located at 1367 East Main Street, Newark, Licking County, Ohio. The CNS was issued as final findings and orders pursuant to Ohio Revised Code (ORC) Chapter 3746 and Ohio Administrative Code (OAC) Chapter 3745-300.

The CNS states that, based on the no further action (NFA) letter, and subject to all conditions set forth in the findings and orders, including but not limited to the terms and conditions of the operation and maintenance (O&M) agreement, Ohio EPA covenants not to sue and releases the City of Newark, Ohio, and its respective agents, employees, members, shareholders, officers, directors, successors and assigns, and successors and assigns of the property, from all civil liability to the State of Ohio to perform additional investigational and remedial activities. The CNS and release of liability applies to the property that has undergone a Phase I or Phase II property assessment in compliance with ORC Chapter 3746 and OAC Chapter 3745-300 or has been the subject of remedial activities conducted under ORC Chapter 3746 and OAC Chapter 3745-300 to address a release of hazardous substances or petroleum, and the assessment or the remedial activities demonstrate or result in compliance with applicable standards.

Enclosed is a certified copy of the CNS and its exhibits for the recording of the documents in the same manner as a deed for the property, as instructed by the CNS (see the "Conditions and Limitations" section of the CNS). The recording of the O&M agreement, as an exhibit of

the CNS, need not include the attachments thereto, i.e., the O&M plan, etc. The enclosed affidavit should be presented to the county recorder's office staff to support the required recording. Remember to submit to Ohio EPA after the recording a complete copy of the CNS that shows the filing date stamp of the county recorder's office.

The complete copy of the stamped document should be sent to the attention of Records Management Officer, Ohio EPA, DERR, Central Office, at the following address:

Ohio EPA – Division of Environmental Response and Revitalization
Assessment Cleanup and Reuse Section – Voluntary Action Program
50 W. Town St., Suite 700
P.O. Box 1049
Columbus, OH 43216-1049

Further, the environmental covenant, which is attached to the CNS as Exhibit 4, must also be recorded in the same manner as a deed to the property (see the "Conditions and Limitations" section of the CNS). Please record the environmental covenant just prior to and separate from the recording of the CNS and its remaining exhibits in the property's chain of title. The CNS becomes effective on the date of the recording of the environmental covenant. Like the CNS recording, remember to submit to Ohio EPA (at the address listed above) a complete copy of the environmental covenant that shows the county recorder's filing date stamp. For questions on the recording of these documents, please contact Ann Fischbein, the Ohio EPA Legal Office attorney, at (614) 644-3037.

OAC 3745-300-03 authorizes Ohio EPA to charge for its actual costs that it may incur related to site-specific activities, such as the monitoring of compliance with the CNS and its O&M agreement or risk mitigation plan, including the review of the submitted reports. This Agency will send a separate correspondence to provide the number of the VAP account established for the property and to ask you to verify the billing information.

This action of the Director is final and may be appealed to the Environmental Review Appeals Commission (Commission) pursuant to ORC 3745.04. The appeal must be in writing and set forth the action complained of and the grounds upon which the appeal is based. The appeal must be filed with the Commission within 30 days after notice of the Director's action. The appeal must be accompanied by a filing fee of \$70.00, made payable to "Ohio Treasurer," which the Commission, in its discretion, may reduce if by affidavit it is demonstrated that payment of the full amount of the fee would cause extreme hardship. Notice of the filing of the appeal shall be filed with the Director within three days after the appeal is filed with the Commission. Ohio EPA requests that a copy of the appeal be served upon the Ohio Attorney General's Office, Environmental Enforcement Section. An appeal may be filed with the Commission at the following address: Environmental Review Appeals Commission, 77 South High Street, 17th Floor, Columbus, Ohio 43215.

Congratulations on the issuance of this CNS. Many persons, including the City of Newark, Ohio and Carnousti Consulting, Ltd, among others, worked hard to remove the environmental barriers associated with redeveloping this property. If you have any questions or concerns, feel free to contact me at (614) 644-2924 or via e-mail at tiffani.kavalec@epa.state.oh.us.

Sincerely,

A handwritten signature in black ink, appearing to read 'TK', with a long horizontal flourish extending to the right.

Tiffani Kavalec, Manager
Division of Environmental Response and Revitalization
Assessment, Cleanup and Reuse (ACRE)

Enclosure

cc: Jeffrey P. Hullinger, Carnousti Consulting, Ltd.

ec: Fred Myers, DERR-CDO
Deborah Strayton, DERR-CDO
Ann Fischbein, Legal Office
records@epa.state.oh.us

TO BE RECORDED IN DEED RECORDS,
PURSUANT TO ORC 317.08(A)

AFFIDAVIT

STATE OF OHIO)
)
COUNTY OF FRANKLIN) ss:

Before me, the subscriber, a Notary Public in and for the State of Ohio, personally appeared Tonya R. Lassiter, who, being duly sworn according to law, deposes and says that: (i) she is employed as a records management officer in the Legal Office of the Ohio Environmental Protection Agency ("Ohio EPA") and, as such, is authorized to sign this Affidavit on behalf of Ohio EPA; and (ii) the attached document is a true and correct copy of the Covenant Not to Sue / Director's Final Findings and Orders issued by the Director, and entered in the Ohio EPA Director's Journal on August 13, 2013, regarding property known as Newark Processing Site, located at 1367 East Main Street in Newark, Licking County, Ohio and further described in the attached Covenant Not to Sue.

Tonya R. Lassiter
Tonya R. Lassiter
Records Management Officer
Ohio EPA Legal Office

Sworn to and subscribed before me, a Notary Public in and for the State of Ohio, this 13th day of August, 2013.

Janine M. Maney
Notary Public
State of Ohio

Permanent Commission
No expiration, R.C. 147.03

This instrument prepared by:

Ann Fischbein, Attorney
Ohio EPA Legal Office
P.O. Box 1049
Columbus, Ohio 43216-1049



JANINE M. MANEY
ATTORNEY AT LAW
NOTARY PUBLIC
STATE OF OHIO
My Comm. Has No
Expiration Date
Section 147.03 R. C.

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

OHIO E.P.A.

AUG 13 2013

ENTERED DIRECTOR'S JOURNAL

BEFORE THE

By: Jeff Cassader Date: 8-13-13

OHIO ENVIRONMENTAL PROTECTION AGENCY

In the matter of:

City of Newark
40 West Main Street
Newark, Ohio 43055

Covenant Not to Sue

**Director's Final Findings
and Orders**

Regarding property known as:

Newark Processing Site
1367 East Main Street
Newark, Ohio

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

FINDINGS

1. A No Further Action Letter, No. 12NFA481 (the "NFA Letter"), was submitted on September 25, 2012 to the Director under the Voluntary Action Program on behalf of the City of Newark, Ohio (the "Volunteer"), by Jeffrey P. Hullinger, P.E, a certified professional, No. CP 214, as defined in ORC 3746.01(F) and OAC 3745-300-01(A) (the "Certified Professional").
2. The Certified Professional issued the NFA Letter by his certified professional affidavit on September 21, 2012. The Certified Professional also submitted to the Director addenda to the NFA Letter, which were issued under certified professional affidavit on February 27, 2013 and May 8, 2013. For the purposes of these Findings and Orders, the term "NFA Letter" includes the addenda.
3. The NFA Letter describes the investigational and remedial activities undertaken at the approximately 66-acre property, known as the Newark Processing Site, located at 1367 East Main Street, Newark, Licking County, Ohio (the "Property"). An exact legal description of the Property is attached hereto as **Exhibit 1**. A property location map is attached hereto as **Exhibit 2**. Based on information in

the NFA Letter, the Property is owned by the City of Newark, Ohio and the parcel numbers are 55-282714-02, 55-282714-01, 48-160062-00, 48-159894-00, and 0211NK01900000006100.

4. The Certified Professional prepared pursuant to OAC 3745-300-13(J) an executive summary of the NFA Letter, which is attached hereto as **Exhibit 3**.

Summary of the Voluntary Action for the Property

5. Based upon the information in the NFA Letter, the Volunteer undertook the following investigational and remedial activities regarding the Property:
 - a. A Phase I property assessment, in accordance with OAC 3745-300-06, to determine whether there is any reason to believe that a release of hazardous substances or petroleum has or may have occurred on, underlying or is emanating from the Property.
 - b. A Phase II property assessment, in accordance with OAC 3745-300-07, including but not limited to investigations of identified areas and affected media at the Property, to assess environmental conditions related to releases of hazardous substances and/or petroleum.
 - c. Activity and use limitations contained in a proposed Environmental Covenant, prepared in accordance with ORC 5301.80 to 5301.92, subject to execution by the Director and recording as described in these Findings and Orders.
 - d. A Risk Mitigation Plan ("RMP"), prepared in accordance with OAC 3745-300-11, that provides various risk mitigation measures for construction or excavation activities at the Property.
 - e. An Operation and Maintenance ("O&M") Plan, prepared in accordance with OAC 3745-300-11, including the engineering controls for the landfill cap to maintain applicable standards and other requirements as set forth in the O&M Plan.
 - f. Other remedial activities, conducted in accordance with OAC 3745-300-11, including grading the waste piles.
 - g. A demonstration that the Property complies with applicable standards based on the remedial activities for the identified chemicals of concern ("COCs") in the identified areas and affected media at the Property through a comparison to background levels in accordance with OAC 3745-300-07, and the use of generic numerical standards in accordance with OAC 3745-300-08.

6. The Certified Professional has verified by affidavit that the voluntary action was conducted and the NFA Letter was issued for the Property in accordance with ORC Chapter 3746 and OAC Chapter 3745-300, that the Property is eligible for the Voluntary Action Program, and that the voluntary action was conducted in compliance with all applicable federal, state and local laws and regulations.
7. At the time that analyses were performed, Kemron, TestAmerica, ALS Laboratory Group, Environmental Science Corporation, Severn-Trent, and Belmont Labs, were certified laboratories, No(s) CL0012, CL0018, CL0022, CL0069, CL0024, and CL0032, respectively, as defined in ORC 3746.01(E) and OAC 3745-300-01(A), whose services were used in support of the NFA Letter (the "Certified Laboratories").
8. The Environmental Covenant will be recorded in the Licking County Recorder's Office as described in the Environmental Covenant and Order No. 2 herein. A copy of the executed Environmental Covenant is attached hereto as **Exhibit 4**. The Environmental Covenant upon recording will:
 - a. Restrict the Property to commercial or industrial land use as defined in OAC 3745-300-08(C)(2)(c)(ii) and (C)(2)(c)(iii) (effective March 1, 2009).
 - b. Protect the main cap area by prohibiting enclosed structures from being placed on the main cap area.
 - c. Limit ground water use such that ground water underlying the Property shall not be extracted or used for any purpose, potable or otherwise, except for investigation, monitoring or remediation of the ground water or for extraction in conjunction with construction or excavation activities or maintenance of subsurface utilities.
9. The RMP, dated February 27, 2013, was developed in accordance with OAC 3745-300-11. The RMP is attached hereto as **Exhibit 6** and incorporated by reference herein. The implementation of the RMP is necessary to mitigate or eliminate human exposure to lead at the Property, during construction or excavation activities.
10. For activities specified in the O&M Plan herein, Ohio EPA and the City of Newark have entered into an O&M Agreement, which includes and incorporates by reference the O&M Plan, in part to mitigate or eliminate human exposure to lead at the Property. The O&M Agreement is attached hereto as **Exhibit 5** and incorporated by reference herein.

Applicable Standards

11. Based on the information contained in the NFA Letter and all conditions set forth

in these Findings and Orders, the Property meets applicable standards contained in ORC Chapter 3746 and OAC Chapter 3745-300 for various uses including commercial and industrial land use and restricted ground water use. The applicable standards for the Property are those in effect when the NFA Letter was issued on September 21, 2012. The applicable standards, the methods of achieving compliance with the standards, and the associated points of compliance for the standards for each complete exposure pathway, are identified in the NFA Letter, which contains a summary table titled "Applicable Standards and Remedial Activities for Each Exposure Pathway". The standards include one or more of the following:

- a. Generic numerical standards determined in accordance with OAC 3745-300-08.
 - b. Property-specific risk assessment standards developed in accordance with OAC 3745-300-09.
 - c. Background standards determined in accordance with ORC 3746.06(A) and OAC 3745-300-07(H).
 - d. Standards for residential (potable) use of ground water in the deep zone underlying the Property, applied in accordance with ORC 3746.06(B).
12. Based on the remedies identified in this paragraph, the Property complies with applicable standards. Failure of one or more of the remedial activities may constitute noncompliance with applicable standards. The remedies requiring implementation include:
- a. The activity and use limitations set forth in the Environmental Covenant attached hereto, which once recorded will limit the Property to commercial or industrial land uses, protect the main cap area by prohibiting enclosed structures from being placed on the main cap area; and limit ground water use such that ground water underlying the Property shall not be extracted or used for any purpose, potable or otherwise, except for investigation, monitoring or remediation of the ground water or for extraction in conjunction with construction or excavation activities or maintenance of subsurface utilities.
 - b. The engineering controls and associated activities set forth in the O&M Plan and the O&M Agreement attached hereto, which prevent exposure to COCs and maintain the cap.
 - c. The risk mitigation measures implemented under the RMP attached hereto, which mitigate exposure to COCs in soil for construction and excavation activities.

13. Pursuant to ORC 3746.12(A), the Director of Ohio EPA is authorized to issue a covenant not to sue for the Property through these Findings and Orders. Based on the NFA Letter and subject to all conditions set forth in these Findings and Orders, the remedial activities for the Property are protective of public health and safety and the environment.

ORDERS

Covenant

1. Based on the NFA Letter, and subject to all conditions set forth in these Findings and Orders, including but not limited to the terms and conditions of the O&M Agreement, Ohio EPA hereby covenants not to sue and releases the City of Newark, and its agents, employees, 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. This covenant not to sue and release of liability ("Covenant") applies to the Property that has undergone a Phase I or Phase II property assessment in compliance with ORC Chapter 3746 and OAC Chapter 3745-300 or has been the subject of remedial activities conducted under ORC Chapter 3746 and OAC Chapter 3745-300 to address a release of hazardous substances or petroleum, and the assessment or the remedial activities demonstrate or result in compliance with applicable standards.

Conditions and Limitations

Effectiveness of the Covenant— Recording of the Environmental Covenant

2. The Covenant provided in Order No. 1 herein shall become effective upon the date the Environmental Covenant is recorded in accordance with this Order. The Environmental Covenant shall be filed as a document separate from the filing required by Order No. 3 herein. Within thirty (30) days after the issuance of these Findings and Orders, the City of Newark shall:
 - a. File with the Licking County Recorder's Office for recording, in the same manner as a deed to the Property pursuant to ORC 3746.14 and 5301.88, the Environmental Covenant as executed and attached hereto as Exhibit 4. The document for recording may be an executed original or a copy of the same authenticated by Ohio EPA.
 - b. Submit to Ohio EPA a copy of the recorded Environmental Covenant that shows the filing date stamp of the Licking County Recorder's Office or other reliable information that verifies the recording of the document in accordance with this Order. The submission shall include a cover letter that identifies "Recorded - Environmental Covenant for Newark Processing Site NFA Letter No. 12NFA481." The submission shall be

delivered either (1) electronically to the DERR Records Management Officer at Ohio EPA's Central Office, at records@epa.state.oh.us or (2) by U.S. mail or by other reliable means to both Ohio EPA's Central Office, 50 West Town Street, P.O. Box 1049, Columbus, OH 43216-1049, Attention: DERR Records Management Officer and Ohio EPA's Central District Office, 50 West Town Street, P.O. Box 1049, Columbus, OH 43216-1049, Attention: DERR Site Coordinator for Newark Processing Site.

Requirement to Record These Findings and Orders / Covenant Not to Sue

3. Within thirty (30) days after the issuance of these Findings and Orders, City of Newark shall:
 - a. File with the Licking County Recorder's Office, for recording in the same manner as a deed to the Property pursuant to ORC 3746.14, a copy of these Findings and Orders, including Exhibits 1 (Legal Description), 2 (Property Location Map), 3 (Executive Summary) 5 (O&M Agreement) and 6 (Risk Mitigation Plan).
 - b. Submit to Ohio EPA a copy of the Findings and Orders that shows the filing date stamp of the Licking County Recorder's Office or other reliable information that verifies the recording of the Findings and Orders in accordance with this Order. The submission shall include a cover letter that identifies "Recorded - Covenant Not to Sue for NFA Letter No. 12NFA481." The submission shall be delivered either (1) electronically to the DERR Records Management Officer at Ohio EPA's Central Office, at records@epa.state.oh.us or (2) by U.S. mail or by other reliable means to both Ohio EPA's Central Office, 50 West Town Street, P.O. Box 1049, Columbus, OH 43216-1049, Attention: DERR Records Management Officer and Ohio EPA's Central District Office, 50 West Town Street, P.O. Box 1049, Columbus, OH 43216-1049, Attention: DERR Site Coordinator for Newark Processing Site.

Requirement to Submit Annually a Risk Mitigation Plan Notification

4. Pursuant to ORC 3746.12(A) and OAC 3745-300-11(F), the Covenant provided in Order No. 1 of these Findings and Orders is conditioned on Ohio EPA's receipt of a notification regarding the RMP, as attached hereto and referenced in the Findings herein. This condition in no way supersedes any separate notification requirement included in the RMP (i.e., notice to contractors).
 - a. The notification shall be submitted annually, by March 1 for the reporting period of January 1 to December 31 of each year after the effective date of these Findings and Orders, beginning with March 1, 2014.
 - b. Each notification shall be submitted under affidavit by the person(s) who

have knowledge of RMP implementation for the applicable notification period. The notification shall address:

- i. Whether implementation of the RMP occurred during the notification period.
 - ii. The events that required the implementation of the RMP, the exposures to contaminated environmental media that may have occurred, and the risk mitigation measures that were undertaken in accordance with the RMP.
- c. The submission shall include a cover letter that identifies "Risk Mitigation Plan Annual Report for NFA Letter No. 12NFA481." The submission shall be delivered either (1) electronically to the DERR Records Management Officer at Ohio EPA's Central Office, at records@epa.state.oh.us or (2) by U.S. mail or by other reliable means to both Ohio EPA's Central Office, 50 West Town Street, P.O. Box 1049, Columbus, OH 43216-1049, Attention: DERR Records Management Officer and Ohio EPA's Central District Office, 50 West Town Street, P.O. Box 1049, Columbus, OH 43216-1049, Attention: DERR Site Coordinator for Newark Processing Site.

Requirement to Notify Director of each Transfer or Assignment of the Property or of the Covenant

5. Pursuant to ORC 3746.12(A)(2) and the O&M Agreement, the City of Newark shall notify the Director of each transfer or assignment of the Property or any portion of the Property or of the Covenant within fourteen (14) days. The notice to Ohio EPA shall include a cover letter that identifies "Notice of Conveyance pursuant to ORC 3746.12(A)(2) - NFA Letter No. 12NFA481." The notice shall be addressed and delivered either (1) electronically to the DERR Records Management Officer at Ohio EPA's Central Office, at records@epa.state.oh.us or (2) by regular U.S. mail or by other reliable means to both Ohio EPA's Central Office, 50 West Town Street, P.O. Box 1049, Columbus, OH 43216-1049, Attention: DERR Records Management Officer and Ohio EPA's Central District Office, 50 West Town Street, P.O. Box 1049, Columbus, OH 43216-1049, Attention: DERR Site Coordinator for Newark Processing Site.

Limits of Covenant

6. Pursuant to ORC 3746.12(B)(1), 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. Upon a finding pursuant to ORC 3746.12(B)(2) that the Property or portion thereof no longer complies with applicable standards upon which issuance of the Covenant was based and receipt of the Director's notice of that fact and the requirements of ORC 3746.12(B)(3), the person(s) responsible for maintaining compliance with

- those standards shall receive an "opportunity to cure" the noncompliance. ORC 3746.12(B)(4) provides for revocation of the Covenant upon a Director's finding that the noncompliance has not been cured.
7. Pursuant to ORC 3746.05, any use of the Property that does not comply with the institutional controls identified herein (i.e., the activity and use limitations contained in the Environmental Covenant), voids the Covenant on and after the date of the commencement of the noncomplying use.
 8. The Covenant shall not apply to releases of hazardous substances or petroleum that occur after the issuance of the NFA Letter.
 9. The Covenant shall not apply:
 - a. To claims for natural resource damages the State may have pursuant to Sections 107 or 113 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), 42 U.S.C. 9607 and 9613, as amended.
 - b. To claims the State may have pursuant to Section 107 of CERCLA, 42 U.S.C. 9607, as amended, for costs other than those for damages to natural resources, provided that the State incurs those other costs as a result of an action by the United States Environmental Protection Agency.
 - c. As otherwise specifically provided in ORC Chapter 3746, including but not limited to obligations arising under other applicable laws
 10. Nothing in the Covenant limits the authority of the Director to act under ORC 3734.13 and 3734.20 to 3734.23, or to request that a civil action be brought pursuant to the ORC or common law of the State to recover the costs incurred by Ohio EPA for investigating or remediating a release or threatened release of hazardous substances or petroleum at or from the Property, when the Director determines that the release or threatened release poses an imminent and substantial threat to public health or safety or the environment.
 11. 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.

Ohio EPA Access to Property

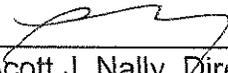
12. Pursuant to ORC 3746.21 or 3746.171 and the Environmental Covenant, and at reasonable times, upon proper identification, and stating the necessity and purpose as directed by applicable law, authorized representatives of the Director shall be granted access to the Property for the inspection or investigation

purposes authorized under applicable law, including but not limited to determining whether the Property is being used in compliance with the activity and use limitations contained in the Environmental Covenant.

Transfer

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

IT IS SO ORDERED:



Scott J. Nally, Director
Ohio Environmental Protection Agency

AUG 13 2013

Date

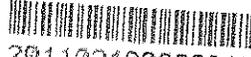
Exhibit 1
Legal Description

CONDITIONAL APPROVAL FOR THIS TRANSFER
CORRECTION REQUIRED FOR NEXT TRANSFER

TIM LOLLO, LICKING COUNTY ENGINEER

P.M.N. 2/10/11

parcel one - poor beg. ref. pt., no bearings or distances.



201102100002915
Fee: 4 \$44.00 T20110002762
02/10/2011 4:24PM BAHGB BOX
Bryan R. Long
Licking County Recorder

DESCRIPTION APPROVED
TIM LOLLO
LICKING COUNTY ENGINEER
APPROVED BY
P.M.N. par. 2-5

TRANSFERRED

Date February 10, 2011
Michael L. Smith
Licking County Auditor

SEC. 319.202 COMPLIED WITH
MICHAEL L. SMITH, AUDITOR
BY *BE SA*

FORM 686X Warranty Deed

Know all Men by these Presents

That Newark Processing Co., Inc., an Ohio corporation, by its duly authorized officer, for valuable consideration received, grants with general warranty covenants to The City of Newark, Ohio, a political subdivision in the State of Ohio, whose tax mailing address is 40 West Main Street, Newark, Ohio 43066, the following described real estate:

PARCEL ONE:

Situated in the County of Licking, State of Ohio, and City of Newark and bounded and described as follows:

Beginning at a point at the intersection of the easterly property line of the City of Newark property (deed reference, Volume 716, page 869, of the Deed Records of Licking County, Ohio) and the southerly right-of-way line of the B. & O. Railroad.

Thence Northeasterly, passing along said railroad right-of-way line to a point in the northwest corner of the Newark Processing Company property (deed reference Volume 784, page 585, of said Deed Records); thence Southerly, passing along the westerly line of said Newark Processing Company's property 800 feet, more or less, to a point, thence Westerly, to a point in said City of Newark's easterly property line said point being 600 feet, more or less from said beginning point; thence northerly, passing along said City of Newark's easterly property line 600 feet, more or less, to the place of beginning.

The above described parcel is estimated to contain 10 acres, more or less.

There is also conveyed hereby a non-exclusive right-of-way (50) feet in width extending along the entire southerly line of said Newark Processing Company's property and then north along the west line of said Newark Processing Company's property and then north along the west line of said Newark Processing Company's property until said right-of-way adjoins the southerly line of the above described 10-acre parcel, which right-of-way shall be used for ingress and egress from the above described 10-acre parcel.

Parcel No. 055-282714-02.000

PARCEL TWO:

Situated in the State of Ohio, County of Licking and City of Newark, bounded and described as follows:

Beginning at a point in the common line between the westerly line of Lot 5 of Madison Township and the easterly corporation line of the said City of Newark at its intersection with the southerly right of way line of the B & O Railroad, said point also being the northwest corner of the Newark Supply & Machine Co., Inc. property (deed reference, Volume 631 at page 572 of the Deed Records of said County); thence South 72° 21' 40" West, passing along the said southerly right of way line of the B & O Railroad, 729.67 feet to a point; thence South 5° 50' 53" East, 1036.36 feet to a point; thence North 72° 05' 59" East, 800.47 feet to a point in the said common line between Madison Township and Newark's easterly corporation line. said point also begin in the westerly line of the Metal Development & Consulting Co. property (deed reference, Volume 643 at page 506, of said Deed Records); thence North 1° 00' East, passing along said common line and along the westerly lines of said Metal Development & Consulting Co. and the said Newark Supply & Machine Co., Inc. properties, 1067.66 feet to the place of beginning.

Containing 15.46 acres, more or less.

The above description prepared by William B. Henderson, Registered Surveyor #5242, dated July 13, 1977.

Parcel No. 055-282714-01.000

PARCEL THREE:

Situated in the Township of Madison, County of Licking, and State of Ohio;

Situate in Lot #5, Quarter 3, Madison Township, Licking County, Ohio, and being described as follows:

Beginning at an iron stake at the intersection of the center line of the B & O Railroad right-of-way and the west line of Lot #5, said stake being south 3° 00' west a distance of 532 feet from the point where the center line of State Route #16 intersects the west line of Lot #5. Running thence from said beginning point south 3° 00' west a distance of 941 feet along the west line of Lot #5 to an iron stake; thence south 86° 20' east a distance of 300 feet to an iron stake; thence north 11° 50' east a distance of 159 feet to a stake; thence north 22° 50' east a distance of 211 feet to a stake; thence north 30° 30' east a distance of 237 feet to a stake; thence north 1° 00' east a distance of 138 feet to a stake; thence north 17° 20' east a distance of 173 feet to a stake; thence north 30° 00' east a distance of 76 feet to a stake; thence north 11° 15' west a distance of 179 feet to the center of the B & O Railroad right-of-way; thence south 74° 08' west a distance of 560.3 feet along said right-of-way's center line to the point of beginning, containing 10.30 acres.

Subject to the B & O Railroad right-of-way, containing 0.65 of an acre.

Parcel No. 046-160062-00.000

PARCEL FOUR:

Situated in the County of Licking, in the State of Ohio, and in the Township of Madison and bounded and described as follows:

Situated in Lot #5, Quarter 3 and being more particularly described as follows: - Beginning at an iron stake on the West line of Lot #5, located South 3° 00' West, 1,473 feet from the point where the center line of County Highway #585 (Old State Route #16), intersects the West line of Lot #5, and said point being also located South 3° 00' West 941 feet from an iron stake in the center line of the B & O right of way; running thence from said beginning point South 3° 00' West a distance of 1824 feet along the West line of Lot #5 to a point in the Licking River; thence following the Licking River the following courses and distances, North 69° 30' East a distance of 360 feet, thence North 45° 30' East a distance of 300 feet, thence North 8° 30' West a distance of 250 feet; thence North 25° 15' West a distance of 300 feet, thence North 23° 55' East a distance of 800 feet; thence North 12° 25' East a distance of 500 feet; thence North 5° 20' West a distance of 450 feet; thence North 15° 40' East a distance of 300 feet; thence North 66° 20' East a distance of 400 feet, thence North 87° 05' East a distance of 400 feet; thence South 63° 25' East a distance of 520 feet; thence North 89° 10' East a distance of 120 feet to a point on the East line of Lot #5, thence North 2° 55' East a distance of 354.8 feet along the East line of Lot #5, to the center line of the B & O Railroad right of way; thence North 89° 00' West a distance of 407 feet along the center of said railroad to the beginning of a curve to the left; thence along the center said curve a distance of 700 feet to the P.T.; thence South 74° 08' West a distance of 466 feet along said center line to an iron stake at the Northeast corner of 10.30 acres conveyed to The Newark Supply & Machine Co., Inc., Deed Volume 631 page 572; thence following the boundary of said 10.30 acre tract South 11° 15' East a distance of 179 feet; thence South 30° 0' West a distance of 76 feet; thence South 17° 20' West a distance of 173 feet; thence South 1° 0' West a distance of 138 feet; thence South 30° 30' West a distance of 237 feet; thence South 22° 50' West a distance of 211 feet; thence South 11° 50' West a distance of 159 feet; thence North 86° 20' West a distance of 300 feet, to the point of beginning, containing 29.75 acres, subject however, to the B & O Railroad right of way, containing 1.80 acres. This description was prepared by Floyd W. Barnes, Registered Surveyor #3917

Parcel No. 046-159894-00.000

PARCEL FIVE:

Situated in the State of Ohio, County of Licking and Township of Madison and bounded and described as follows:

Being part of Lot 5, Township 2 and Range 11 of the United States Military Lands and further bounded and described as follows:

Beginning at a spike in the intersection of the west line of Lot 5 and the centerline of County Road 585, said point being the true point of beginning for the following described parcel of land; thence North 86° 32' 29" East, along the centerline of County Road 585, a distance of 214.16 feet to a spike in the centerline of said County Road; thence South 2° 14' 31" East, passing an iron pin in the southerly right of way line of County Road 585 at 30.00 feet, a total distance of 426.90 feet to an iron pin in the northerly right of way line of the B. & O. Railroad; thence South 74° 50' 13" West, along the northerly right of way line of the B. & O. Railroad and passing an iron pin at 258.14 feet, a total distance of 272.89 feet to an iron pin; thence north 3° 53' 01" East, along the westerly line of Lot 5, a distance of 486.15 feet to the true point of beginning; containing 2.49 acres, more or less.

This description was prepared by William B. Henderson, Registered Surveyor no. 5242 on December 29, 1972.

EXCEPTING 2.156 acres described as follows:

Situated in the State of Ohio, County of Licking, City of Newark, and being 2.156 acres of that 2.49 acre tract as conveyed to Newark Processing Company, Inc., by deed of record in Deed Book Volume 768, Page 1, all references being to those of record in the Recorder's Office, Licking County, Ohio, said 2.156 acre parcel being more particularly bounded and described as follows:

Beginning for reference at the intersection of the west line of Lot 5 and the centerline of County Road 585 (also known as East Main Street);

thence North 86° 32' 29" East, along said centerline of County Road 585 a distance of 30.26 feet to the True Point of Beginning for the following described 2.156 acre parcel;

thence continuing along said centerline North 86° 32' 29" East, a distance of 183.90 feet to a point;

thence leaving said centerline South 02° 14' 31" East, a distance of 426.90 feet to a point on the northerly right-of-way line of B & O Railroad;

thence South 74° 50' 13" West, along said right-of-way line a distance of 241.15 feet to a point;

thence North 03° 53' 01" East, a distance of 479.66 feet to the True Point of Beginning and containing 2.156 acres, more or less.

Subject to all valid and existing easements, restrictions, and conditions of record.

The bearings in the above described description are based upon the bearings of record for the Newark Processing Company Inc., 2.488 acre tract of record in Official Record Volume 768, Page 1.

The above description was prepared from available records.

Leaving 0.333 acres, more or less. Said excepted parcel being conveyed to Arthur L. Wills by instrument 199806180023081, Official Record, Licking County, Ohio.

Subject to all valid and existing building and other restrictions and conditions of record, to all valid and existing zoning laws, ordinances and resolutions, to all valid and existing easements of record.

Except for real estate taxes and special assessments, if any.

Last References: Volume 181, Page 470, Official Record, Licking County, Ohio

Volume 764, Page 585, Deed Record, Licking County, Ohio

Volume 613, Page 572, Deed Record, Licking County, Ohio

Volume 814, Page 39, Deed Record, Licking County, Ohio

Volume 768, Page 1, Deed Record, Licking County, Ohio

Property Address: East Main Street, Newark, Ohio 43055

IN WITNESS WHEREOF, the undersigned has set its hand this 28th day of December, 2010

Newark Processing Co., Inc., an Ohio corporation

By: Michael R. Firestone
Michael R. Firestone, President

STATE OF OHIO
LICKING COUNTY, SS:

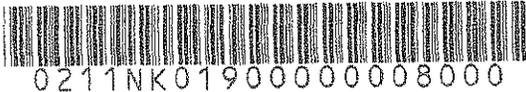
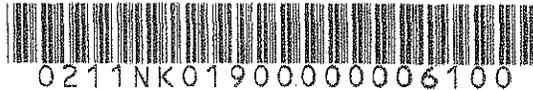
Before me, a Notary Public, in and for said County and State, personally appeared the above named Newark Processing Co., Inc., an Ohio corporation, by Michael R. Firestone, its President, personally known by me to be the person executing the foregoing instrument, who acknowledged the signing of the same to be his free and voluntary act and deed, and the free and voluntary act and deed of Newark Processing Co., Inc., an Ohio corporation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal at Newark, Licking County, Ohio this 28th day of December, 2010



James R. Cooper
Notary Public

JAMES R. COOPER, Attorney At Law
Notary Public - State of Ohio
My commission has no expiration date
Section 147.03, R.C.



THIS INSTRUMENT PREPARED BY: MORROW, GORDON & BYRD, Ltd., Attorneys at Law
33 West Main Street, P.O. Box 4190, Newark Ohio 43058-4190, (740) 345-9611



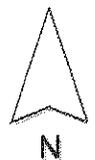
Exhibit 2
Property Location Map



PHASE I PROPERTY ASSESSMENT UPDATE
CITY OF NEWARK, OHIO

Carnoustie
Consulting, Ltd.
Engineering & Environmental Services

SITE LOCATION MAP
NEWARK PROCESSING SITE
1367 EAST MAIN STREET
NEWARK, OHIO



Drawn by JPH

Scale 1:24,000

Date: 9/18/2012

Project No.: 10-028

Figure 1

REFERENCE DEEDS

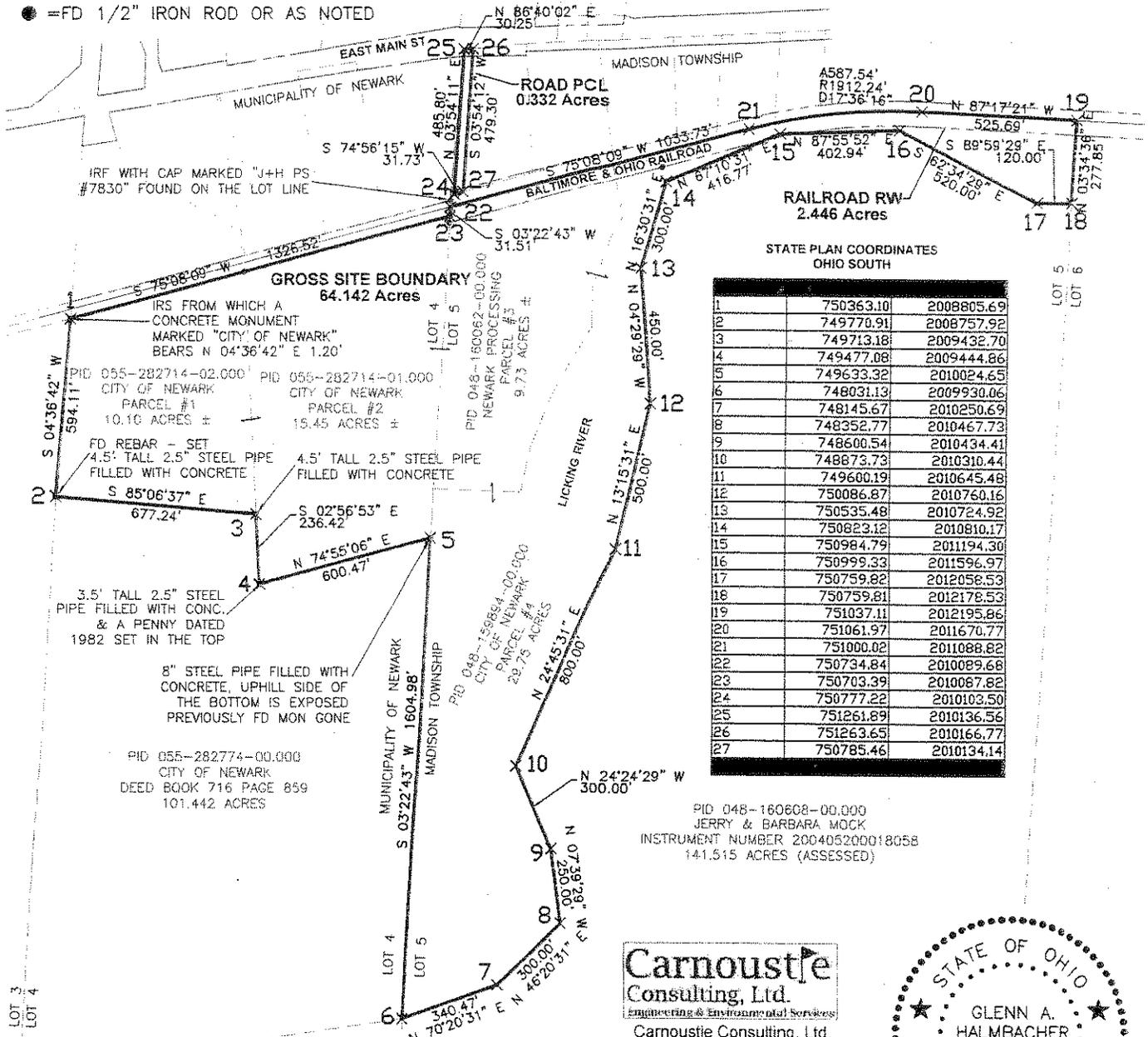
DEEDS TO CITY OF NEWARK, RECORDED AS INSTRUMENT #20110210002915, CONTAINING 64.142 GROSS ACRES; AND A NON-CONTIGUOUS ROAD ACCESS PARCEL CONTAINING 0.332 ACRES.

EXHIBIT "B" PLAT CITY OF NEWARK

SITUATED IN THE CITY OF NEWARK, AND IN LOT #5, QUARTER 3, MADISON TOWNSHIP, LICKING COUNTY, OHIO

LEGEND

● = FD 1/2" IRON ROD OR AS NOTED



STATE PLAN COORDINATES
OHIO SOUTH

1	750363.10	2008805.69
2	749770.91	2008757.92
3	749713.18	2009432.70
4	749477.08	2009444.86
5	749633.32	2010024.65
6	748031.13	2009930.06
7	748145.67	2010250.69
8	748352.77	2010467.73
9	748600.54	2010434.41
10	748873.73	2010310.44
11	749600.19	2010645.48
12	750086.87	2010760.16
13	750535.48	2010724.92
14	750823.12	2010810.17
15	750984.79	2011194.30
16	750999.33	2011596.97
17	750759.82	2012058.53
18	750759.81	2012178.53
19	751037.11	2012195.86
20	751061.97	2011670.77
21	751000.02	2011088.82
22	750734.84	2010089.68
23	750703.39	2010087.82
24	750777.22	2010103.50
25	751261.89	2010136.56
26	751263.65	2010166.77
27	750785.46	2010134.14

PID 048-160608-00.000
JERRY & BARBARA MOCK
INSTRUMENT NUMBER 200405200018058
141.515 ACRES (ASSESSED)

Carnoustie Consulting, Ltd.
Engineering & Environmental Services
Carnoustie Consulting, Ltd.
6012 Kentigern Ct South
Dublin OH 43017
phone 614-467-9252
fax 614-750-1600
cell 614-205-1533



SCALE: 1" = 500'

GLENN HALMBACHER, PE, PS
Registered Surveyor No. 7658

Date

Project #09-14 Newark Processing

Exhibit 3
Executive Summary

SECTION B: EXECUTIVE SUMMARY OF NO FURTHER ACTION LETTER

EXECUTIVE SUMMARY OF NO FURTHER ACTION LETTER

Newark Processing Site 1367 East Main Street Newark, Licking County, Ohio

Volunteer: City of Newark 40 West Main Street, Newark, OH 43055

Property Owner: City of Newark

Issued by: Jeffrey P. Hullinger, CP #214, 614-467-9252

This executive summary has been completed to meet the requirements of Ohio Administrative Code (OAC) 3745-300-13(I) and OAC 3745-300-13(K) which serves as the recording summary of the NFA letter. Copies of the no further action (NFA) letter may be obtained by contacting the Ohio EPA – Division of Environmental Response and Remediation, Central Office Records Management Officer. A legal description of the subject property has been included as an attachment to both the NFA letter and covenant not to sue.

Section 1.0 – PROPERTY HISTORY

The property consists of 65.843 acres that were used from the mid-1970s until the mid-1990s for the storage and reprocessing of aluminum refining dross and saltcake. The property is presently vacant.

Section 2.0 – TIMELINE

VAP Phase I property assessment completed: June 2005

VAP Phase II property assessment completed: June 2005; revised report completed February 27, 2013

VAP Phase I property assessment update completed: September 20, 2012

NFA letter issued: September 21, 2012; updated February 27, 2013

Section 3.0 – NFA LETTER

Section 3.1 – Phase I Property Assessment

The approximately 66-acre property is located in Newark, Licking County, Ohio.

The purpose of the Phase I Property Assessment was to investigate the former aluminum dross processing facility under VAP Phase I Property Assessment requirements as set forth in O.A.C. 3745-300-06. Based upon the findings of this Phase I Assessment, a Phase II investigation was required for the Property. Seven identified areas were identified in the Phase I PA and considered for eligibility determination and further investigation in a Phase II PA.

The Phase I property assessment listed [number] on-site identified areas (IAs):

Identified Area Number	Description of Releases, Sources and/or Source Areas	Potential and/or Suspected COCs from Phase I
1 Main Plant Area	Aluminum dross, dross fines, and saltcake	Al, As, Ba, Cd, Cr, Pb, Ni, Se, Zn, cyanide, fluoride, nitrate, nitrite, ammonia, VOCs
2 West Pile		
3 South Pile		
4 East Pile		
5 Boneyard		
6 Sitewide Ground-water		

7 Septic Tank & Leach Field Area	Possible cleanout-related solvents	VOCs
----------------------------------	------------------------------------	------

Section 3.2 – Proposed Land Use

The proposed use of the property is commercial / industrial. The City intends that the property will be redeveloped for placement of a photovoltaic electrical energy production facility.

Section 3.3 – Phase II Property Assessment

Soil: Dross and saltcake are soil-like materials that in some areas are relatively indistinguishable from gray native soils. Concentrations of the chemicals of concern were evaluated by collecting surface and subsurface samples of dross and underlying soils in IAs 1 through 4, and surface soils in IA 5 to evaluate whether dross-related contaminants had affected soils.

Pathways: Direct contact: commercial or industrial workers

Point of Compliance: 2 feet below ground surface

Ground water: There are two ground water zones at the property. Chemicals in the shallow groundwater aquifer (8 to 28 feet below ground surface) within shallow soils and dross materials exceed unrestricted potable use standards for methylene chloride, arsenic, selenium, fluoride, nitrite, and possibly cadmium (laboratory reporting limit exceeded the MCL). Deep groundwater is separated from the shallow zone by approximately 60 feet of dry clay, and so protection of that zone is demonstrated through weight of evidence.

Ohio EPA's Site Investigation and Field Unit (SIFU) conducted biological and surface water evaluations that demonstrated that shallow groundwater does not cause adverse impacts to biological receptors in either Shawnee Run or the Licking River.

A ground water use restriction has been placed on the property to eliminate the use of groundwater for potable purposes. Enclosed construction within the capped IA 1, 3 and 4 is prohibited in order to address the potential for vapor intrusion caused by VOC contamination (methylene chloride) in the shallow groundwater.

Pathways: Potable use / non-potable use of shallow groundwater

Point of Compliance: Property boundary, Shawnee Run and the Licking River to the south and east; boundary of capped area to the north and west

Surface Water and Sediments: Both surface water and sediment samples were collected from Shawnee Run and the Licking River. Based upon analyses of these samples and upon biological surveys they conducted, Ohio EPA's Site Investigation and Field Unit (SIFU) concluded that there are no adverse impacts to biological receptors in either Shawnee Run or the Licking River.

Pathways: Not applicable

Point of Compliance: Not applicable

Indoor Air: See above use limitations that will prevent the potential for vapor intrusion into indoor air spaces.

Pathways: Volatilization from groundwater to indoor air for commercial-industrial workers

Point of Compliance: Indoor air

Section 3.4 – Ecological receptors

Both surface water and sediment samples were collected from Shawnee Run and the Licking River. Based upon analyses of these samples and upon biological surveys they conducted, Ohio EPA's Site Investigation and Field Unit (SIFU) concluded that there are no adverse impacts to biological receptors in either Shawnee Run or the Licking River.

Section 3.5 – Chemicals of Concern (COCs)

The following COCs were evaluated at the Property: Al, As, Ba, Cd, Cr, Pb, Ni, Se, Zn, cyanide, fluoride, nitrate, nitrite, ammonia, and VOCs.

VOCs (soil and groundwater) by Method 8260B.
metals (soil and groundwater) by Method 6010B.
Cyanide (soil and groundwater) by Method 9014.
Fluoride (soil and groundwater) by Method SM4500-F-C
Nitrate-nitrite (soil and groundwater) by Methods 353.2 and 353.2M
Ammonia (not a VAP parameter - soil and groundwater) by Methods 350.1 and SM4500-NH3

Section 3.6 – Property Specific Risk Assessment (PSRA)

A property-specific risk assessment was completed for this Property, but it was not used in the determination of nor compliance with applicable standards.

Section 4.0 – CERTIFIED LABORATORIES

Kemron (now Microbac) – CL0012; TestAmerica – CL0018; ALS Laboratory Group – CL0022; Environmental Science Corp. – CL0069; Severn-Trent (now TestAmerica) – CL0024; Belmont Labs – CL0032.

Section 5.0 – REMEDIAL ACTIVITIES

The rugged and highly uneven dross piles were regraded to provide a free-draining, structurally stable surface, covered with a bentonite-impregnated geofabric (geocomposite or GCL) layer, capped with two feet minimum thickness of clean fill soil, and hydroseeded to yield a vegetated, low-maintenance final surface.

Remediation was conducted under an authorization granted under OAC 3745-27-13 and an ORC 3734.02(G) exemption issued on November 18, 2009. The above construction complied with that authorization. The authorization requires a post-remedy Operation & Maintenance Plan and Agreement; these conditions will be met when those documents are finalized and submitted as addenda to the NFA Letter.

Section 6.0 – OPERATIONS AND MAINTENANCE / ENGINEERING CONTROLS / RISK MITIGATION PLANS

The soil cover will require limited ongoing maintenance of the cap, which is addressed by the O&M Plan for the Property. The O&M Plan includes the required procedures for monitoring and maintaining the 2-foot point of compliance for the Property and includes provisions for inspection and maintenance of the engineering controls, including erosion control features. In addition, a Risk Mitigation Plan has been prepared and will be implemented to manage potential exposures of construction or excavation workers to underlying dross and groundwater that may exceed applicable direct-contact standards.

Section 7.0 – INSTITUTIONAL CONTROLS

An environmental covenant limiting the property to commercial or industrial land use, and a prohibition against potable ground water use will be recorded for the property. The covenant will also prohibit enclosed construction within the main cap area.

Section 8.0 – DETERMINATION AND COMPLIANCE WITH APPLICABLE STANDARDS

The Property is in compliance with VAP applicable standards for commercial and industrial land use through engineering controls administered under an O&M plan and agreement, and through implementation of groundwater use and enclosed construction restrictions.

END OF SECTION B

Exhibit 4
Environmental Covenant

ENVIRONMENTAL COVENANT

This Environmental Covenant is entered into by the City of Newark, Ohio 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 described in Section 2 herein ("the Property") to the activity and use limitations set forth herein.

WHEREAS, the City of Newark has undertaken a voluntary action with respect to the Property under Ohio's Voluntary Action Program ("VAP"), pursuant to ORC Chapter 3746 and Ohio Administrative Code ("OAC") Chapter 3745-300.

WHEREAS, the Property is owned by the City of Newark.

WHEREAS, the voluntary action remedy for the Property includes the activity and use limitations set forth in this Environmental Covenant. Certified Professional Jeffrey P. Hullinger, CP214 issued a no further action letter ("NFA Letter") for the Property on September 21, 2012 and submitted the NFA Letter to Ohio EPA ("No. 12NFA481") with a request for a covenant not to sue.

WHEREAS, the activity and use limitations support the issuance of the NFA Letter and a covenant not to sue for the Property; the limitations protect against exposure to the hazardous substances in soil and ground water on or underlying the Property.

WHEREAS, the NFA Letter's executive summary contains an overview of the voluntary action. The executive summary may be reviewed as an exhibit to the covenant not to sue issued for the Property, recorded in the deed records for the Property in the Licking County Recorder's Office. The covenant not to sue and the NFA Letter (No. 12NFA481) may also be reviewed by contacting the Records Management Officer for the Division of Environmental Response and Revitalization, at Ohio EPA's Central Office, 50 West Town Street, P.O. Box 1049, Columbus, Ohio 43216-1049, 614-644-2924, or at Ohio EPA's Central District Office at the same address at 614-728-3778, or by contacting the City of Newark, Department of Development at 40 West Main Street, Newark, Ohio 43055, 740-670-7530.

Now therefore, the City of Newark 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 an approximately 66-acre tract of real property; parcels currently numbered 55-282714-02, 55-282714-01, 48-160062-00, 48-159894-00, and 0211NK01900000006100, owned by The City of Newark, located at 1367 East Main Street, Newark, OH, in Licking County, Ohio, and more particularly described in Attachment 1 attached hereto and hereby incorporated by reference herein ("Property").

3. Owner. This Property is owned by *the City of Newark* ("Owner"), whose offices are located at 40 West Main Street, Newark, OH.

4. Holder. Pursuant to ORC § 5301.81, the holder of this Environmental Covenant ("Holder") is the Owner listed above.

5. Activity and Use Limitations. As part of the voluntary action remedy described in the NFA Letter, Owner hereby imposes and agrees to comply with the following activity and use limitations:

- i. **Limitation for Commercial or Industrial Land Uses**. The Property is hereby limited to commercial or industrial land use only, as defined in OAC 3745-300-08(C)(2)(c)(ii) and (C)(2)(c)(iii) (effective March 1, 2009). OAC 3745-300-08(C)(2)(c)(ii) defines commercial land use as "land use with potential exposure of adult workers during a business day and potential exposures of adults and children who are customers, patrons, or visitors to commercial facilities during the business day. Commercial land use has potential exposure of adults to dermal contact with soil, inhalation of vapors and particles from soil and ingestion of soil. Examples of commercial land uses include but are not limited to warehouses; retail gasoline stations; retail establishments; professional offices; hospitals and clinics; religious institutions; hotels; motels; and parking facilities."

OAC 3745-300-08(C)(2)(c)(iii) defines industrial land use as "land use with potential exposure of adult workers during a business day and potential exposures of adults and children who are visitors to industrial facilities during the business day. Industrial land use has potential exposure of adults to dermal contact with soil, inhalation of vapors and particles from soil and ingestion of soil. Examples of industrial land uses include, but are not limited to: lumberyards; power plants; manufacturing facilities such as metalworking shops, plating shops, blast furnaces, coke plants, oil refineries, brick factories, chemical plants and plastics plants; assembly plants;

non- public airport areas; limited access highways; railroad switching yards; and marine port facilities.”

- B. **Protection of Main Cap Area.** The Main Cap Area is the area depicted in Attachment 2, attached hereto and incorporated by reference herein. (“Main Cap Area”). Within the Main Cap Area identified on the attached Final Construction Grade Drawing, no enclosed structures are to be placed.
- C. **Groundwater Use Limitation.** Ground water underlying the Property shall not be extracted or used for any purpose, potable or otherwise, except for investigation, monitoring or remediation of the ground water or for extraction in conjunction with construction or excavation activities or maintenance of subsurface utilities.

6. Running with the Land. This Environmental Covenant shall be binding upon the Owner, during the time that the Owner owns the Property or any portion thereof, and upon 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. 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 against any non-compliance. Nothing in this Environmental Covenant shall restrict the Director of Ohio EPA from exercising any authority under applicable law. Pursuant to ORC § 3746.05, if the Property or any portion thereof is put to a use that does not comply with this Environmental Covenant, the covenant not to sue issued for the Property by the Director of Ohio EPA under ORC § 3746.12 is void on and after the date of the commencement of the noncompliant use.

8. Rights of Access. Owner hereby grants to Ohio EPA’s authorized representatives the right of access to the Property for implementation or enforcement of this Environmental Covenant and shall require such access as a condition of any transfer of the Property or any portion thereof.

9. Compliance Reporting. Owner or Transferee, if applicable, shall, upon request by Ohio EPA, submit to Ohio EPA written documentation verifying that the activity and use limitations set forth herein remain in place and are being complied with.

10. Notice upon Conveyance. Each instrument hereafter conveying any interest in the Property or any portion thereof 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, RECORDED IN THE DEED OR OFFICIAL RECORDS OF THE LICKING COUNTY RECORDER ON _____, 2013, INSTRUMENT NUMBER _____. THE ENVIRONMENTAL COVENANT CONTAINS THE FOLLOWING ACTIVITY AND USE LIMITATIONS:

- A. **Limitation for Commercial or Industrial Land Uses.** The Property is hereby limited to commercial or industrial land use only, as defined in OAC 3745-300-08(C)(2)(c)(ii) and (C)(2)(c)(iii) (effective March 1, 2009).
- B. **Protection of Main Cap Area.** The Main Cap Area is the area depicted in Attachment 2, attached hereto and incorporated by reference herein. ("Main Cap Area"). Within the Main Cap Area identified on the attached Final Construction Grade Drawing, no enclosed structures are to be placed.
- C. **Groundwater Use Limitation.** Ground water underlying the Property shall not be extracted or used for any purpose, potable or otherwise, except for investigation, monitoring or remediation of the ground water or for extraction in conjunction with construction or excavation activities or maintenance of subsurface utilities.

Owner or Transferee, if applicable, shall notify Ohio EPA within ten (10) days after each conveyance of an interest in the Property or any portion thereof. The notice shall include the name, address, and telephone number of the Transferee, a copy of the deed or other documentation evidencing the conveyance, and a survey map that shows the boundaries of the property being transferred.

11. 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 and that the

Owner conducted a current title search that shows that the Property is not subject to any interests or encumbrances that conflict with the activity and use limitations set forth in this Environmental Covenant;

- 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 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; and
- E. that the Owner has identified all other persons that own an interest in or hold an encumbrance on the Property.

12. Amendment or Termination. This Environmental Covenant may be amended or terminated by consent of all of the following: the Owner, or a Transferee, if applicable, and the Director of the Ohio EPA, pursuant to ORC §§ 5301.82 and 5301.90 and other applicable law. The term, "Amendment," as used in this Environmental Covenant, shall mean 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 so long as there is at least one limitation remaining. The term, "Termination," as used in this Environmental Covenant, shall mean 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 by the Owner or Transferee, if applicable, of the Property or any 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, if applicable, shall file such instrument for recording with the County Recorder's Office, and shall provide a file- and date-stamped copy of the recorded instrument to Ohio EPA.

13. 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.

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

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

for recording, in the same manner as a deed to the Property, with the County Recorder's Office.

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 County Recorder's Office.

17. Distribution of Environmental Covenant. The Owner shall distribute a file- and date-stamped copy of the recorded Environmental Covenant to: Ohio EPA, any other signatories to the Environmental Covenant; and the Township of Madison, Licking County, Ohio.

18. Notice. Unless otherwise notified in writing by any party hereto or Ohio EPA, any document or communication required by this Environmental Covenant shall be submitted to:

As to Ohio EPA:

Division of Environmental Response and Revitalization
Ohio EPA – Central Office
50 West Town Street
P.O. Box 1049
Columbus, Ohio 43216-1049

Attn.: DERR Records Management Officer, regarding NFA 12NFA481

Or, send electronically to records@epa.state.oh.us

And

Ohio EPA - Central District Office
Division of Environmental Response and Revitalization
50 West Town Street
P.O. Box 1049
Columbus, Ohio 43216-1049

Attn.: DERR Site Coordinator for NFA 12NFA481

As to Owner:

City Service Director
40 West Main Street
Newark, Ohio 43055

The undersigned represents and certifies that the undersigned is authorized to execute this Environmental Covenant.

IT IS SO AGREED:

City of Newark, Ohio

Jeff Hall
Signature of Owner

JEFF HALL, Mayor
Printed Name and Title

State of Ohio)
County of Licking) ss:

Before me, a notary public, in and for said county and state, personally appeared Jeff Hall, a duly authorized representative of the Owner, who acknowledged to me the execution of the foregoing instrument on behalf of the Owner.

CHRYSTINE AMBRANO
PUBLIC NOTARY
STATE OF OHIO

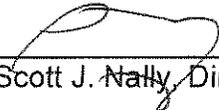
IN TESTIMONY WHEREOF, I have subscribed my name and affixed my official seal
this 28 day of May, 2013.



JACQUELINE SUE PRINCE
NOTARY PUBLIC, STATE OF OHIO
My Commission Expires April 14, 2016

Jacqueline Sue Prince
Notary Public

OHIO ENVIRONMENTAL PROTECTION AGENCY



Scott J. Nally, Director

State of Ohio)
)
County of Franklin) ss:

Before me, a notary public, in and for Franklin County, Ohio, personally appeared Scott J. Nally, 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 9th day of AUGUST, 2013.





Notary Public

CHARMA DIANE CASTEEL
NOTARY PUBLIC
STATE OF OHIO
MY COMMISSION EXPIRES
May 10, 2014

This instrument was prepared by:

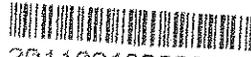
BethAnn Hullinger, Attorney at Law
General Counsel
Carnoustie Consulting, Ltd.
6012 Kentigern Ct. South
Dublin, Ohio 43017

ATTACHMENT 1

Legal Description

CONDITIONAL APPROVAL FOR THIS TRANSFER
CORRECTION REQUIRED FOR NEXT TRANSFER
TIM LOLLO, LICKING COUNTY ENGINEER

P.M.N. 2/10/11
parcel one - poor beg. ref. pt., no bearings on
distances.



201102100002915
Pg. 2 544 00 720110002762
02/10/2011 4:24PM OAHBB BOX
Eryan R. Long
Licking County Recorder

DESCRIPTION APPROVED TIM LOLLO LICKING COUNTY ENGINEER APPROVED BY P.M.N. par. 2-5
--

TRANSFERRED

Date February 10 2011
[Signature]
Licking County Auditor

FORM 666X Warranty Deed

SEC. 319.202 COMPLIED WITH
MICHAEL L. SMITH, AUDITOR
BY *[Signature]* SAA

Know all Men by these Presents

That Newark Processing Co., Inc., an Ohio corporation, by its duly authorized officer, for valuable consideration received, grants with general warranty covenants to The City of Newark, Ohio, a political subdivision in the State of Ohio, whose tax mailing address is 40 West Main Street, Newark, Ohio 43055, the following described real estate:

PARCEL ONE:

Situated in the County of Licking, State of Ohio, and City of Newark and bounded and described as follows:

Beginning at a point at the intersection of the easterly property line of the City of Newark property (deed reference, Volume 716, page 859, of the Deed Records of Licking County, Ohio) and the southerly right-of-way line of the B. & O. Railroad.

Thence Northeasterly, passing along said railroad right-of-way line to a point in the northwest corner of the Newark Processing Company property (deed reference Volume 764, page 585, of said Deed Records); thence Southerly, passing along the westerly line of said Newark Processing Company's property 800 feet, more or less, to a point, thence Westerly, to a point in said City of Newark's easterly property line said point being 500 feet, more or less from said beginning point; thence northerly, passing along said City of Newark's easterly property line 600 feet, more or less, to the place of beginning.

The above described parcel is estimated to contain 10 acres, more or less.

There is also conveyed hereby a non-exclusive right-of-way (50) feet in width extending along the entire southerly line of said Newark Processing Company's property and then north along the west line of said Newark Processing Company's property and then north along the west line of said Newark Processing Company's property until said right-of-way adjoins the southerly line of the above described 10-acre parcel, which right-of-way shall be used for ingress and egress from the above described 10-acre parcel.

Parcel No. 055-282714-02.000

PARCEL TWO:

Situated in the State of Ohio, County of Licking and City of Newark, bounded and described as follows:

Beginning at a point in the common line between the westerly line of Lot 5 of Madison Township and the easterly corporation line of the said City of Newark at its intersection with the southerly right of way line of the B & O Railroad, said point also being the northwest corner of the Newark Supply & Machine Co., Inc. property (deed reference, Volume 631 at page 572 of the Deed Records of said County); thence South 72° 21' 40" West, passing along the said southerly right of way line of the B & O Railroad, 729.67 feet to a point; thence South 5° 50' 53" East, 1036.35 feet to a point; thence North 72° 05' 59" East, 600.47 feet to a point in the said common line between Madison Township and Newark's easterly corporation line, said point also begin in the westerly line of the Metal Development & Consulting Co. property (deed reference, Volume 643 at page 505, of said Deed Records); thence North 1° 00' East, passing along said common line and along the westerly lines of said Metal Development & Consulting Co. and the said Newark Supply & Machine Co., Inc. properties, 1067.60 feet to the place of beginning.

Containing 15.46 acres, more or less.

The above description prepared by William B. Henderson, Registered Surveyor #5242, dated July 13, 1977.

Parcel No. 055-282714-01.000

PARCEL THREE:

Situated in the Township of Madison, County of Licking, and State of Ohio;

Situate in Lot #5, Quarter 3, Madison Township, Licking County, Ohio, and being described as follows:

Beginning at an iron stake at the intersection of the center line of the B & O Railroad right-of-way and the west line of Lot #5, said stake being south 3° 00' west a distance of 532 feet from the point where the center line of State Route #16 intersects the west line of Lot #5. Running thence from said beginning point south 3° 00' west a distance of 941 feet along the west line of Lot #5 to an iron stake; thence south 88° 20' east a distance of 300 feet to an iron stake; thence north 11° 50' east a distance of 159 feet to a stake; thence north 22° 50' east a distance of 211 feet to a stake; thence north 30° 30' east a distance of 237 feet to a stake; thence north 1° 00' east a distance of 138 feet to a stake; thence north 17° 20' east a distance of 173 feet to a stake; thence north 30° 00' east a distance of 78 feet to a stake; thence north 11° 15' west a distance of 179 feet to the center of the B & O Railroad right-of-way; thence south 74° 08' west a distance of 560.3 feet along said right-of-ways center line to the point of beginning, containing 10.30 acres.

Subject to the B & O Railroad right-of-way, containing 0.65 of an acre.

Parcel No. 048-160062-00.000

PARCEL FOUR:

Situated in the County of Licking, in the State of Ohio, and in the Township of Madison and bounded and described as follows:

Situated in Lot #5, Quarter 3 and being more particularly described as follows: - Beginning at an iron stake on the West line of Lot #5, located South 3° 00' West, 1,473 feet from the point where the center line of County Highway #585 (Old State Route #16), intersects the West line of Lot #5, and said point being also located South 3° 00' West 941 feet from an iron stake in the center line of the B & O right of way; running thence from said beginning point South 3° 00' West a distance of 1824 feet along the West line of Lot #5 to a point in the Licking River; thence following the Licking River the following courses and distances, North 69° 30' East a distance of 360 feet, thence North 45° 30' East a distance of 300 feet; thence North 8° 30' West a distance of 250 feet; thence North 25° 15' West a distance of 300 feet; thence North 23° 55' East a distance of 800 feet; thence North 12° 25' East a distance of 500 feet; thence North 5° 20' West a distance of 450 feet; thence North 15° 40' East a distance of 300 feet; thence North 66° 20' East a distance of 400 feet; thence North 87° 05' East a distance of 400 feet; thence South 63° 25' East a distance of 520 feet; thence North 89° 10' East a distance of 120 feet to a point on the East line of Lot #5; thence North 2° 55' East a distance of 354.8 feet along the East line of Lot #5, to the center line of the B & O Railroad right of way; thence North 89° 00' West a distance of 407 feet along the center of said railroad to the beginning of a curve to the left; thence along the center said curve a distance of 700 feet to the P. T.; thence South 74° 08' West a distance of 466 feet along said center line to an iron stake at the Northeast corner of 10.30 acres conveyed to The Newark Supply & Machine Co., Inc., Deed Volume 631 page 672; thence following the boundary of said 10.30 acre tract South 11° 15' East a distance of 179 feet; thence South 30° 0' West a distance of 78 feet; thence South 17° 20' West a distance of 173 feet; thence South 1° 0' West a distance of 138 feet; thence South 30° 30' West a distance of 237 feet; thence South 22° 50' West a distance of 211 feet; thence South 11° 50' West a distance of 159 feet; thence North 88° 20' West a distance of 300 feet; to the point of beginning, containing 29.75 acres, subject however, to the B & O Railroad right of way, containing 1.80 acres. This description was prepared by Floyd W. Barnes, Registered Surveyor #3917

Parcel No. 048-159894-00.000

PARCEL FIVE:

Situated in the State of Ohio, County of Licking and Township of Madison and bounded and described as follows:

Being part of Lot 5, Township 2 and Range 11 of the United States Military Lands and further bounded and described as follows:

Beginning at a spike in the intersection of the west line of Lot 5 and the centerline of County Road 585, said point being the true point of beginning for the following described parcel of land; thence North $86^{\circ} 32' 25''$ East, along the centerline of County Road 585, a distance of 214.16 feet to a spike in the centerline of said County Road; thence South $2^{\circ} 14' 31''$ East, passing an iron pin in the southerly right of way line of County Road 585 at 30.00 feet, a total distance of 426.90 feet to an iron pin in the northerly right of way line of the B. & O. Railroad; thence South $74^{\circ} 50' 13''$ West, along the northerly right of way line of the B. & O. Railroad and passing an iron pin at 256.14 feet, a total distance of 272.89 feet to an iron pin, thence north $3^{\circ} 53' 01''$ East, along the westerly line of Lot 5, a distance of 486.15 feet to the true point of beginning; containing 2.49 acres, more or less.

This description was prepared by William B. Henderson, Registered Surveyor no. 5242 on December 29, 1972.

EXCEPTING 2.156 acres described as follows:

Situated in the State of Ohio, County of Licking, City of Newark, and being 2.156 acres of that 2.49 acre tract as conveyed to Newark Processing Company, Inc., by deed of record in Deed Book Volume 768, Page 1, all references being to those of record in the Recorder's Office, Licking County, Ohio, said 2.156 acre parcel being more particularly bounded and described as follows:

Beginning for reference at the intersection of the west line of Lot 5 and the centerline of County Road 585 (also known as East Main Street);

thence North $86^{\circ} 32' 29''$ East, along said centerline of County Road 585 a distance of 30.26 feet to the True Point of Beginning for the following described 2.156 acre parcel;

thence continuing along said centerline North $86^{\circ} 32' 29''$ East, a distance of 183.90 feet to a point;

thence leaving said centerline South $02^{\circ} 14' 31''$ East, a distance of 426.90 feet to a point on the northerly right-of-way line of B & O Railroad;

thence South $74^{\circ} 50' 13''$ West, along said right-of-way line a distance of 241.15 feet to a point;

thence North $03^{\circ} 53' 01''$ East, a distance of 479.66 feet to the True Point of Beginning and containing 2.156 acres, more or less.

Subject to all valid and existing easements, restrictions, and conditions of record.

The bearings in the above described description are based upon the bearings of record for the Newark Processing Company Inc., 2.488 acre tract of record in Official Record Volume 768, Page 1.

The above description was prepared from available records.

Leaving 0.333 acres, more or less. Said excepted parcel being conveyed to Arthur L. Wills by instrument 189806180023081, Official Record, Licking County, Ohio.

Subject to all valid and existing building and other restrictions and conditions of record, to all valid and existing zoning laws, ordinances and resolutions, to all valid and existing easements of record.

Except for real estate taxes and special assessments, if any.

Last References: Volume 181, Page 470, Official Record, Licking County, Ohio

Volume 764, Page 585, Deed Record, Licking County, Ohio

Volume 613, Page 572, Deed Record, Licking County, Ohio

Volume 814, Page 39, Deed Record, Licking County, Ohio

Volume 768, Page 1, Deed Record, Licking County, Ohio

Property Address: East Main Street, Newark, Ohio 43055

IN WITNESS WHEREOF, the undersigned has set its hand this 28th day of December, 2010.

Newark Processing Co., Inc., an Ohio corporation

By: Michael R. Firestone
Michael R. Firestone, President

STATE OF OHIO
LICKING COUNTY, SS:

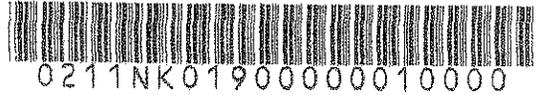
Before me, a Notary Public, in and for said County and State, personally appeared the above named Newark Processing Co., Inc., an Ohio corporation, by Michael R. Firestone, its President, personally known by me to be the person executing the foregoing instrument, who acknowledged the signing of the same to be his free and voluntary act and deed, and the free and voluntary act and deed of Newark Processing Co., Inc., an Ohio corporation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal at Newark, Licking County, Ohio this 28th day of December, 2010.



James R. Cooper
Notary Public

JAMES R. COOPER, Attorney At Law
Notary Public - State of Ohio
My commission has no expiration date
Section 147.02, R.C.



THIS INSTRUMENT PREPARED BY: MORROW, GORDON & BYRD, Ltd., Attorneys at Law
33 West Main Street, P.O. Box 4190, Newark Ohio 43058-4190, (740) 346-9611

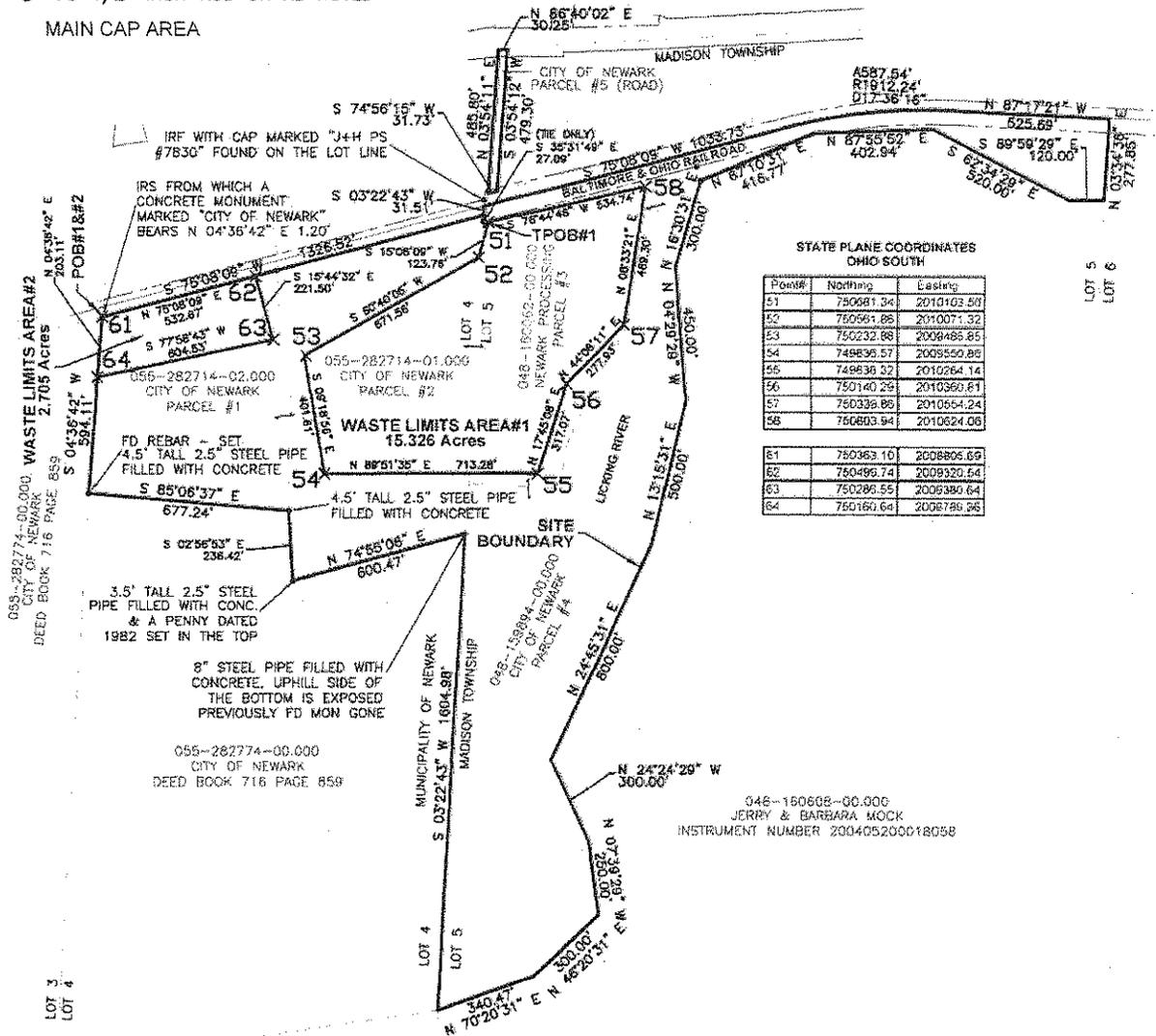


ATTACHMENT 2: MAIN CAP AREA

LEGEND

● =FD 1/2" IRON ROD OR AS NOTED

MAIN CAP AREA



RISK MITIGATION PLAN
NEWARK PROCESSING SITE

Carnoustie
Consulting, Ltd.
Engineering & Environmental Services

LOCATION OF RISK
MITIGATION PLAN
APPLICABLE AREA



Drawn by JPH

Scale as shown

Date: 2/4/2013

Project No.: 10-028

Figure 1

Exhibit 5
Operation and Maintenance Agreement

OPERATION AND MAINTENANCE AGREEMENT
Between Ohio EPA and the City of Newark
Regarding the former Newark Processing Company Property,
Licking County, Ohio

This Operation and Maintenance Agreement ("Agreement") is entered into by the Director of the Ohio Environmental Protection Agency ("Director") and the City of Newark ("Newark"), pursuant to Ohio Revised Code ("ORC") Chapter 3746 and Ohio Administrative Code ("OAC") Chapter 3745-300. In consideration of the mutual covenants and subject to the terms and conditions of this Agreement, the parties agree as follows:

1. **The NFA Letter Property.** A no further action letter (NFA Letter No. 12NFA481; the "NFA Letter") under the Voluntary Action Program ("VAP") was submitted to the Director on behalf of Newark on *September 21, 2012*, by Jeffrey P. Hullinger, a certified professional (Certified Professional No. 214). The NFA Letter addresses approximately 66 acres of real property owned by the City of Newark and located at 1367 East Main Street, Newark, Licking County, Ohio (the "Property"). The legal description of the Property is contained in the NFA Letter and is incorporated into this Agreement by reference.
2. **O&M Plan.** The NFA Letter includes an Operation and Maintenance Plan ("O&M Plan"). The term "O&M Plan" refers to the O&M Plan dated February 22, 2013. The O&M Plan is attached hereto as Attachment 1 and is incorporated into this Agreement by reference. The O&M Plan is available for review as a public record with the NFA Letter for the Property, and a copy obtained by contacting the Records Management Officer at Ohio EPA's Central District Office, at P.O. Box 1049, Columbus, Ohio 43216-1049, Telephone: (614) 728-3778.
3. **Requirement for an O&M Agreement.** This Agreement is required for the Property pursuant to ORC 3746.10(C)(2) or 3746.12(A)(2) and OAC 3745-300-11(A)(4) and 3745-300-11(E)(4).
4. **Remedy for the Property.** The remedy for the Property includes, overall, the following:
 - a. **Remedies Performed.** Remedies performed at the Property included capping with a geocomposite layer and soil cover, which are documented by the NFA letter.

subject to the process outlined in the Compliance Schedule Agreement Section of this Agreement. However, noncompliance with an activity and use limitation for the Property voids the Covenant Not to Sue, as provided in ORC 3746.05.

10. **Financial Assurance.** Newark shall ensure that reasonable and adequate funds in the amount of at least three thousand eight hundred twenty dollars (\$3,820.00) are available to comply with this Agreement and the O&M Plan by providing financial assurance. For its financial assurance, Newark has executed an affidavit for an annual appropriation of \$3,820.00, copy attached hereto as Attachment 2. Newark agrees to annually renew the appropriation or execute and fund another comparable, acceptable financial assurance, and submit to Ohio EPA a copy of each renewed appropriation or other financial assurance. Examples of acceptable financial assurance include a trust fund, a surety bond guaranteeing payment into a trust fund, a surety bond guaranteeing performance of this Agreement and the O&M Plan, a letter of credit, an insurance policy, the obligated party's financial assurance demonstration under VAP affidavit, an escrow account, or such other financial assurance as approved by Ohio EPA. In the event the amount or form of financial assurance provided herein is inadequate to comply with the terms of this Agreement, the Director may propose a modification of this paragraph pursuant to the Modification Section of this Agreement.
11. **Notice to Prospective Property Transferees of Remedy Obligations.** At least thirty (30) days prior to the execution of any sales contract or other document transferring ownership of the Property, or any portion of the Property that is subject to this Agreement, Newark shall provide written notice to the prospective Property transferee that the Property, or such portion of the Property, is subject to the Covenant Not to Sue and this Agreement and the O&M Plan.
12. **Notice to the Director of Transfer of Property.** Within fourteen (14) days after a sale or other transfer of the Property, or any portion of the Property that is subject to this Agreement, Newark shall provide written notice to the Director that the Property, or such portion of the Property, has been sold or otherwise transferred. This notice submitted to the Director shall include:
 - a. The name, address, and telephone number of the new Property owner and the name, title, address, email address and telephone number of the contact person for the new Property owner;
 - b. A legal description of the Property or such portion of the Property being transferred; and

- c. The closing date of the transfer of ownership of the Property or such portion of the Property.

13. Option to Transfer this Agreement / Notice to Director. Pursuant to ORC 3746.14(C), Newark may transfer this Agreement to any other person (the "Transferee") by assignment or in conjunction with the acquisition of title to the Property. Within fourteen (14) days after such transfer, Newark shall provide written notice to the Director of the terms and conditions of the transfer of obligations of this Agreement and the O&M Plan ("Transfer Terms and Conditions"), by submitting:

- a. The name, address, and telephone number of the Transferee and the name, title, address, e-mail address and telephone number of the contact person for the Transferee;
- b. A statement of the extent to which the Transferee has assumed the obligations of this Agreement and the O&M Plan;
- c. A copy of the legal instrument(s) that provide the Transfer Terms and Conditions; and
- d. A copy of the Transferee's proposed financial assurance that complies with the Financial Assurance Section of this Agreement. The Transferor's financial assurance shall remain effective until Ohio EPA approves in writing the Transferee's financial assurance and the Transferee's financial assurance is fully executed and funded.

Upon the Director's receipt of such notice of the Transfer Terms and Conditions in accordance with this section of the Agreement, and Ohio EPA's approval of the Transferee's financial assurance, the Transferee shall be considered a party to this Agreement, in accordance with the Transfer Terms and Conditions.

14. Subparceling. Upon written notice submitted by Newark to the Director, that one or more parcels of the Property have been divided or subparceled, this Agreement shall apply separately to each subdivided parcel subject to this Agreement upon the date of subdivision or the date of the submission of written notice, whichever occurs later. Newark shall provide such written notice by submitting:

- a. The legal description of the subdivided parcels;

- b. A survey map or maps of the subdivided parcels;
- c. The date of the subdivision;
- d. A copy of the legal instrument(s) providing for the subdivision; and
- e. The name(s) of the new owner, if any, of the subdivided parcels.

Upon the written notice submitted pursuant to this Section, this Agreement shall be deemed to be amended, without modification of this Agreement, to identify the subdivided parcels of the Property. The Covenant Not to Sue shall remain in effect for any subdivided portion of the Property that continues to comply with the requirements of this Agreement and the applicable standards that form the basis of the Covenant Not to Sue. Any revocation of the Covenant Not to Sue for any parcel shall not be based solely on a finding that any other subdivided parcel of the Property no longer complies with the applicable standards or the requirements of this Agreement.

- 15. Document Submittals / Notifications to Parties.** All documents, including but not limited to notices and reports, required to be submitted by Newark pursuant to this Agreement shall be identified by NFA Letter Number 12NFA481 and addressed to the following persons:

For Ohio EPA:

Ohio EPA – Central Office
Division of Environmental Response and Revitalization
50 West Town Street
P.O. Box 1049
Columbus, OH 43216-1049
Attn: DERR Compliance Officer, the former Newark Processing Company
Property (NFA No. 12NFA481)
Electronic filings: records@epa.state.oh.us

and

Ohio EPA-Central District Office
Division of Environmental Response and Revitalization
50 West Town Street
P.O. Box 1049

Columbus, OH 43216-1049
Attn: Project Coordinator for the former Newark Processing Company
Property (NFA No. 12NFA481)

For City of Newark:

City of Newark
40 West Main Street
Newark, OH 43055
Attn: Jeff Hall
Mayor

and

City of Newark
40 West Main Street
Newark, OH 43055
Attn: David Rhodes
Director of Public Service

Either party may designate an alternative contact name or mailing address upon written notification to the other party.

16. **Modification of this Agreement or the O&M Plan.** This Agreement or the O&M Plan may be modified by agreement of the appropriate parties. Modifications to this Agreement shall be in writing, signed by the authorized representative of Newark and by the Director, and shall be effective on the date signed by the Director. Modifications to the O&M Plan shall be submitted in writing to Ohio EPA, subject to approval by Ohio EPA, and effective upon approval by Ohio EPA. Ohio EPA reserves the right to require the submittal of a new NFA Letter for a proposed modification that will result in the application of an applicable standard, land use, or a remedy different than that contained in the NFA Letter approved by the Covenant Not to Sue.
17. **Compliance Schedule Agreement.** Within thirty (30) days after the mailing of notice from the Director of finding that the Property or a portion of the Property no longer complies with an applicable standard upon which the issuance of the Covenant was based, Newark shall notify the Director of its intention to return the Property or such portion of the Property to compliance with the applicable

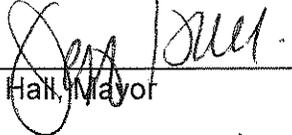
standards upon which the Covenant was based ("cure") and enter into a compliance schedule agreement with the Director for such cure, in accordance with ORC 3746.12(B).

18. **Compliance with Other Laws.** Newark shall conduct all activities pursuant to this Agreement and the O&M Plan in compliance with all applicable local, state, and federal laws and regulations, including but not limited to requirements to obtain permits or authorizations. Newark acknowledges that Ohio EPA's review and approval of any health and safety measures contained in the O&M Plan is limited to ensuring compliance with the requirements of ORC Chapter 3746 and OAC Chapter 3745-300 and does not extend to determining compliance with the Occupational Safety and Health Act, 29 U.S.C. 651 *et seq.*, the regulations adopted under that act, or any obligation imposed by the Occupational Safety and Health Administration.
19. **Inspections by Ohio EPA.** Newark shall allow the Director or his authorized representatives to perform inspections to determine compliance with this Agreement. Such inspections shall be consistent with ORC Chapter 3746 and OAC Chapter 3745-300, including but not limited to the reasonableness of inspection timing and frequency in accordance with ORC 3746.21.
20. **Program Costs for Monitoring Compliance with this Agreement.** Newark shall reimburse Ohio EPA for the actual direct and indirect costs incurred by Ohio EPA in monitoring compliance with this Agreement pursuant to ORC 3746.04(B)(8) and OAC 3745-300-03.
 - a. Ohio EPA will periodically submit to Newark an itemized statement of its monitoring costs for the previous year(s). Monitoring costs include, but are not limited to, costs for reviewing submissions or reports required by this Agreement, conducting Property inspections, and corresponding with the Volunteer or its representative.
 - b. Within thirty (30) days of receipt of such itemized statement, Newark shall remit payment for all of Ohio EPA's monitoring costs for the previous year(s). If Newark disputes the accuracy of items on the itemized statement, a request for review of the statement may be made within thirty (30) days of receipt of the statement. After review, Ohio EPA will resubmit to Newark an itemized statement with appropriate revisions. Newark shall remit payment within fourteen (14) days of receipt of the resubmitted statement.

Agreement shall be a valid and binding obligation enforceable in accordance with its terms and conditions and effective upon the date of the Director's signature.

In witness whereof, the parties hereto have executed this Agreement.

CITY OF NEWARK:

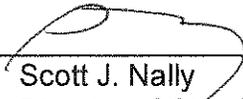
By: 
Jeff Hall, Mayor

Date: 5-23-13

Printed Name: JEFF HALL

Title: MAYOR

OHIO ENVIRONMENTAL PROTECTION AGENCY:

By: 
Scott J. Nally
Director of Ohio EPA

Date: 8/9/13

This instrument was prepared by:

BethAnn Hullinger, Attorney at Law
General Counsel
Carnoustie Consulting, Ltd.
6012 Kentigern Ct. South
Dublin, Ohio 43017

ATTACHMENT 1
O&M Plan

Operation and Maintenance Plan

for the:

Former Newark Processing Site

1367 East Main Street

Newark, OH 43055

City of Newark, Volunteer and Property Owner

40 West Main Street

Newark, OH 43055

**NFA Letter Issued by: VAP Certified Professional Jeffrey P. Hullinger, CP #214
with**

Carnoustie Consulting, Ltd.

6012 Kentigern Ct. South

Dublin, OH 43017

614-467-9252

February 22, 2013

Carnoustie
Consulting, Ltd.
Engineering & Environmental Services

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1.0 Map Showing Engineering Controls

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Appendix A Inspection Form

Appendix B Example Affidavit

Section 1.0 – Purpose of the Operation and Maintenance Plan (OAC 3745-300-11(E)(1)(a))

The purpose of this operation and maintenance (O&M) plan is to ensure this property maintains compliance with Ohio EPA Voluntary Action Program (VAP) applicable standards through the remedial activities described herein. The remedial activities contained in this operation and maintenance plan are to maintain and monitor an engineering control (two-foot soil cover and underlying geocomposite clay layer).

Section 2.0 – Identification of Remedial Activities Subject to the O&M Plan (OAC 3745-300-11(E)(1))

Remedial activities subject to this O&M plan include only the above-referenced engineering control.

Figure 1 shows the location of the remedial activity(ies) identified above on the property. The remedial activity(ies) identified above has/have been built or implemented prior to the issuance of the no further action (NFA) letter.

Section 3.0 – Description and Purpose of the Remedial Activities Subject to the O&M Plan (OAC 3745-300-11(E)(1)(b))

Site remediation included the following tasks:

- Regrading and compacting of ruggedly uneven dross and saltcake pile materials in both main (IA 1, 3 & 4) and West Pile (IA 2) Identified Areas;
- Placement of Bentomat ST bentonite-impregnated geocomposite clay layer over regraded dross in both the above areas;
- Installing a clean soil cap over the geocomposite layer;
- Placing a groundwater use restriction on the property; and
- Placing a land use restriction on the property to meet the commercial/industrial direct-contact standards in lieu of the residential use standards.

The purpose of the remedial activities and associated engineering controls was to prevent chemicals of concern at the Property from presenting a complete exposure to human users of the Property as restricted to commercial and industrial land use and to prevent possible exposures through potable or nonpotable groundwater use.

Section 4.0 – Applicable Standards Subject to the O&M Plan (OAC 3745-300-11(E)(1)(a) and (OAC 3745-300-11(E)(1)(c)(v))

The VAP applicable standards subject to this O&M plan include direct contact soil standards for commercial/industrial land use and unrestricted potable use standards for Class A ground water without an urban setting designation. This O&M plan is required for the two-foot soil cover and underlying geocomposite clay layer, the engineering control preventing direct contact with soil exceeding applicable standards for commercial/industrial receptors.

Table 1: Applicable Standards and Remedial Activities Subject to the O&M Plan

Remedial Activity	Media	Point of compliance	Exposure Pathway	Receptor	Chemicals of concern	Applicable Standards
Two-foot soil cover and underlying geocomposite clay layer	Soils and dross	2 feet below ground surface	Direct contact with soil	On-Property commercial /industrial workers	Lead	VAP generic numerical direct contact soil standards

Section 5.0 – Evaluating the Effectiveness of the Remedial Activities (OAC 3745-300-11(E)(1)(c))

Section 5.1- Purpose and General Description of the Activities to Evaluate the Effectiveness of the Remedial Activities

To determine the effectiveness of the engineering control, the surface of the capped areas will be inspected twice annually, or at any time the Property owner has cause to believe the engineering control needs repair, for cracks or other breaches. The purpose of this activity is to ensure the contaminated soils underneath the geocomposite layer and soil cover do not become exposed to commercial/industrial workers on the property. The engineering control inspection form included in Appendix A will document the findings of the semi-annual engineering control inspections.

Section 5.2 – Monitoring and Data Collection Activities and Schedules

A designated person will inspect the soil cap areas in the spring and fall for any cracks, breaches or erosional rills. In addition, that designated person will inspect erosional control features at the Licking River and Shawnee Run will be inspected to ensure that they continue to be effective in preventing sediment from the Property from release to these water bodies. Any damage or ineffective

controls that are discovered will be documented in the O&M plan engineering control inspection form found in Appendix A.

Section 6.0 – Operation and Maintenance of the Remedial Activities Subject to the O&M Plan (OAC 3745-300-11(E)(1)(b) and (OAC 3745-300-11(E)(1)(d))

A). Operation Tasks and Schedules:

No activities are needed to operate the two-foot soil cover. The soil cover will operate (e.g., remain intact) at all times and under all conditions as an engineering control.

B). Maintenance Tasks and Schedules

Maintenance tasks will be dependent upon the findings in the semi-annual inspection. If breaches, cracks or erosion that may result in soil exposure are identified, they will be repaired within 30 days of discovery. The repair will consist of filling and compaction with topsoil, followed by seeding to re-establish vegetation and to protect against further damage. If erosion control features constructed to protect the Licking River and Shawnee Run from sediment release are found to be ineffectual, repairs will be made to return these features to full effectiveness.

Section 7.0 - Adjustments to Normal Operation and Maintenance (OAC 3745-300-11(E)(1)(e))

In the event repairs are needed, the repair will be made within 30 days of discovery.

Section 8.0 - Identifying and Addressing Potential Problems with the Remedial Activities Subject to the O&M Plan (OAC 3745-300-11(E)(1)(f))

Heavy rainfall events may cause erosional rills to form in the soil cover, which may cause the underlying geocomposite clay layer to become exposed. Twice-annual visual inspections of the soil cover, as previously described, will be utilized to detect the problem. Any cracks which may result in soil exposure shall be repaired within 30 days of discovery. Repair will consist of filling and compaction with topsoil, followed by seeding to re-establish vegetation and to protect against further damage. Depending on climate and weather conditions, alternative repair methods may be utilized on a temporary basis until the typical repair method described above is judged to be appropriate.

9.0 – Record Keeping (OAC 3745-300-11(E)(1)(g))

Records of all inspection records and annual reports (see Section 10.0 below) will be kept for a minimum of five years, along with records of any corrective measures (if any).

10.0 – Reporting on Operation and Maintenance Plan Activities (OAC 3745-300-11(E)(2))

Following issuance of a no further action letter, the City of Newark (or the new Property owner, if transfer occurs) will submit a report annually to the director, under affidavit, on March 1st, beginning in the year 2014. The report will include the following:

- Results from all remedy effectiveness evaluation activities;
- A demonstration of the performance of all remedial activities subject to the O&M plan;
- A demonstration of how compliance with applicable standards is being met or maintained, including the measures used to maintain the remedy's protectiveness of public health and safety and the environment until the property achieves compliance with applicable standards through a permanent remedy within five years, or other time frame as agreed upon by the director in an operation and maintenance agreement; and
- Confirmation that the remedial activities remain necessary to achieve or maintain applicable standards at the property, or verification conducted in accordance with OAC 3745-300-11(D)(2) that the remedial activities are no longer needed for the property to comply with applicable standards.

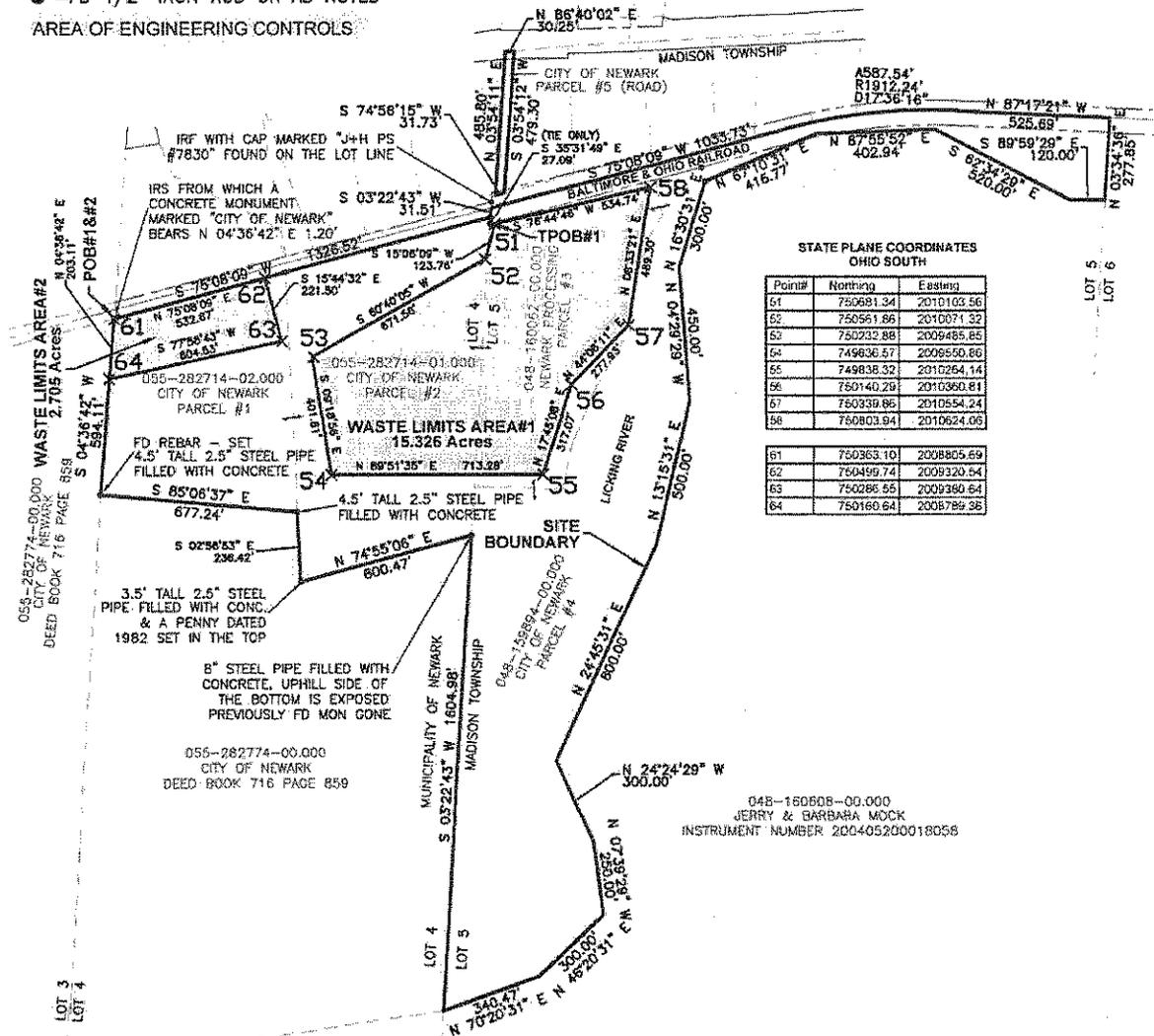
11.0 – Termination of the Operation and Maintenance Plan (OAC 3745-300-11(E)(1)(h))

The soil cover engineering control can be terminated upon demonstrating that the soils underneath meet VAP applicable standards for the property.

LEGEND

● = FD 1/2" IRON ROD OR AS NOTED

AREA OF ENGINEERING CONTROLS



**STATE PLANE COORDINATES
OHIO SOUTH**

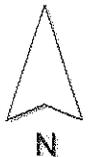
Point#	Northing	Easting
51	750681.34	2010103.56
52	750561.66	2010071.32
53	750232.88	2009485.85
54	749836.57	2008550.80
55	749838.32	2010254.14
56	750140.29	2010360.81
57	750339.86	2010554.24
58	750803.94	2010624.06
61	750363.10	2008805.69
62	750499.74	2009320.64
63	750286.55	2009380.64
64	750160.64	2008789.38



**OPERATION & MAINTENANCE PLAN
THE CITY OF NEWARK**

Carnoustie
Consulting, Ltd.
Engineering & Environmental Services

**LOCATION OF PROPERTY
BOUNDARIES AND ENGINEERING
CONTROLS
NEWARK PROCESSING SITE**



Appendix A
Engineering Controls Inspection Form
Operations and Maintenance Plan
Newark Processing VAP Property

Date _____

Inspector(s) _____

Inspection Item	Condition (Good or Unacceptable)	Action required? If so, specify those actions.
Access to property?		
Cap integrity – breaches, burrowing animal holes, slumping, erosional rills?		
Condition of Sedimentation Pond at Licking River?		
Condition of Sedimentation Pond at Shawnee Run?		
Vegetation adequacy?		

Comments

Appendix B
Annual Report Affidavit

State of _____)
County of _____)

ss:

I, _____ [*name of affiant*], being first duly sworn according to law, state that, to the best of my knowledge, information and belief:

1. I am an adult over the age of eighteen years old and competent to testify herein.
2. I am authorized to submit this affidavit on behalf of the City of Newark for the Newark Processing VAP Property.
3. The purpose of this submission is to provide the affidavit required by OAC 3745-300-11(E)(2)(a).
4. The Operation and Maintenance (O&M) Report (submitted on _____) and the Risk Management Plan Report (submitted on _____) are submitted under this affidavit and incorporated by reference herein.
5. The work indicated by this submission was conducted in compliance with all applicable local, state and federal laws and regulations.
6. The information, data, documents and reports submitted under this affidavit are true, accurate and complete.

Further affiant sayeth naught.

Signature of Affiant

Sworn to before me and subscribed in my presence this ____ day of _____,
20____.

Notary Public

Operation and Maintenance Agreement for former Newark Processing Company Property (NFA No.
12NFA481)

ATTACHMENT 2
Financial Assurance

OHIO VOLUNTARY ACTION PROGRAM
FINANCIAL ASSURANCE FOR OPERATION AND MAINTENANCE AGREEMENT
CITY OF NEWARK, OHIO

AFFIDAVIT

STATE OF OHIO

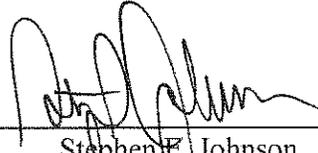
SS:

COUNTY OF LICKING

I, Stephen E. Johnson, being first duly sworn and cautioned according to law, do hereby state, to the best of my knowledge and belief, that:

1. I am an adult over the age of eighteen (18) years, of sound mind, and competent to testify herein.
2. I am currently the duly-elected Auditor for the City of Newark, Ohio with those duties and responsibilities as set forth in the Charter and Ordinances of the City of Newark, Ohio as well as in the Ohio Revised Code.
3. The City of Newark, Ohio has assumed responsibility for compliance with an Operation and Maintenance Agreement to be entered into by said City and the Ohio Environmental Protection Agency regarding the former Newark Processing site now owned by the City of Newark, Ohio and located on East Main Street within the political boundaries thereof.
4. Reasonable and adequate funds in the amount of at least \$3,280.00 are available to the City of Newark, Ohio to ensure compliance with the financial assurance provision of the Operation and Maintenance Agreement referenced herein.
5. The Auditor of the City of Newark, Ohio is responsible for preparing and managing the annual fiscal budget for the City subject to the approval of Council and the appropriation of such funds.
6. As auditor, I will ensure that the annual operating budget presented to the Council for the City of Newark, Ohio will allocate sufficient funds to ensure compliance as addressed herein.
7. The information contained herein is true and accurate to the best of my knowledge and belief.

FURTHER, affiant sayeth naught.

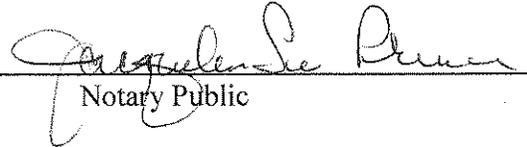


Stephen E. Johnson
Auditor

Sworn to and Subscribed in my presence, this 28 day of May, 2013.



JACQUELINE SUE PRINCE
NOTARY PUBLIC, STATE OF OHIO
My Commission Expires April 17, 2016



Notary Public

Exhibit 6
Risk Mitigation Plan

Risk Mitigation Plan
for the
Former Newark Processing Site
1367 East Main Street
Newark, OH 43055

City of Newark, Volunteer and Property Owner
40 West Main Street
Newark, OH 43055

NFA Letter Issued by: VAP Certified Professional Jeffrey P. Hullinger, CP #214
with

Carnoustie Consulting, Ltd.
6012 Kentigern Ct. South
Dublin, OH 43017
614-467-9252

February 27, 2013

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Section 2.0 Implementing the Risk Mitigation Plan	2
Section 3.0 Potential Health Risks	3
Section 4.0 Precautions Against Exposures.....	3
Section 5.0 Actions to Take if Significant Exposures Occur	5
Section 6.0 Handling Contaminated Environmental Media	5
Section 7.0 Notice to Contractors and Workers	6
Section 8.0 Annual Notification to Ohio EPA.....	7
Section 9.0 Termination Criteria	7

List of Figures

1. Property Map (*depicting portions of property subject to RMP as required by OAC 3745-300-11(F)(1)(g)*)

Section 1.0 – Purpose of the Risk Mitigation Plan (OAC 3745-300-11(F)(1)(a))

The purpose of this risk mitigation plan (RMP) is to provide the risk mitigation measures that apply to construction or excavation activities at the property as defined herein. Risk mitigation measures are those health and safety precautions and other such remedial activities that provide protection to persons working in construction or excavation from exposures to chemicals of concern (COCs) in environmental media at a property, as described by Ohio Administrative Code 3745-300-11(C)(7). Implementation of this RMP allows the property to maintain compliance with VAP applicable standards that apply to construction or excavation activities, in support of a covenant not to sue issued by the director of Ohio EPA under Ohio Revised Code section 3746.12.

Adherence to the measures outlined in this RMP will enhance the protection of construction and/or excavation workers from COCs located in soils below two feet of surface grade at the property. Figure 1 shows the locations of the property subject to the risk mitigation plan. This RMP applies to the COC, environmental media, and exposure pathway summarized in the table below.

Chemical of Concern	Media	Pathway(s)
Lead	Soil	Direct contact

This RMP was prepared in accordance with Ohio Administrative Code rule 3745-300-11. It is not intended to fulfill requirements of other laws that may apply to construction or excavation activities at the property, such as those administered by the Occupational Safety and Health Administration.

Section 2.0 – Implementing the Risk Mitigation Plan (OAC 3745-300-11(F)(1)(e) and (f))

The RMP is to be implemented within the area illustrated on the attached Figure 1 any time excavation is to occur at a depth below two feet of surface grade. The responsibility for implementing this RMP belongs to the owner of the property, including successors.

Section 3.0 – Potential Health Risks (OAC 3745-300-11(F)(1)(b))

Lead is a naturally occurring bluish-gray metal found in all parts of our environment. Much of it comes from human activities including burning fossil fuels, mining, and manufacturing. Lead has many different uses. It is used in the production of batteries, ammunition, metal products (solder and pipes), and devices to shield X-rays. Because of health concerns, lead from paints and ceramic products, caulking, and pipe solder has been dramatically reduced in recent years. The use of lead as an additive to gasoline was prevalent until banned in 1996 in the United States.

Lead can affect almost every organ and system in the body, but particularly affects the nervous system, both in adults and children. Long-term exposure of adults to lead can result in decreased performance in some tests that measure functions of the nervous system. It may also cause weakness in fingers, wrists, or ankles. Lead exposure also causes small increases in blood pressure, particularly in middle-aged and older people, and can cause anemia. Exposure to high lead levels can severely damage the brain and kidneys in adults or children, and ultimately cause death. In pregnant women, high levels of exposure to lead may cause miscarriage. High-level exposure in men can damage the organs responsible for sperm production.

Section 4.0 – Precautions Against Exposures (OAC 3745-300-11(F)(1)(c))

Exposure to lead on the property could occur when construction and excavation workers come in contact with those soils impacted below two feet of surface grade, as depicted by Figure 1. Contact can include dermal contact with exposed skin, such as bare hands and forearms, accidental ingestion when soil gets on food, such as transfer from dirty hands to food, or breathing in particles of lead contaminated soil as dust. Construction and excavation workers should always attempt to limit their exposure to soils below two feet of surface grade, or lessen the time after contact that the impacted soil remains on the skin. Specific precautions to be taken at all times when the upper two feet of soil is breached are as follows:

1. Wear clothing that limits the skin area available for contact with the soil. Examples of such clothing include gloves, hard hats, long sleeve shirts, and long pants.
2. Wash hands frequently and always before eating, smoking, chewing gum or tobacco, or other activities that involve contact between the hands and items to be placed in the mouth. This will prevent the spread of any soil on the hands to the items being placed in the mouth.
3. Do not apply ointments, cream, make-up or other substances before washing both the area to which the substance is to be applied and, if the substance is to be applied by hand, the hands. The application of such substances can provide a mechanism by which soil can be trapped next to the skin.
4. Cover cuts, scrapes and other open skin areas. Injured skin allows compounds in the soil to be more readily absorbed into the body than intact skin.
5. Wash hands and other exposed areas, especially those areas with visible dirt, before leaving the work site for extended time periods. This limits the amount of time that the soil is potentially in contact with the skin, thereby reducing the amount of the chemicals that can be absorbed through the skin.
6. Change work clothes shortly after leaving the property, especially those work clothes having either visible dirt or made damp through sweat or other liquids. Wash such clothes prior to wearing them again. Gloves and other such items that come into direct contact with the soil should also be washed, if possible.
7. Wash hair and other less accessible portions of the body shortly after leaving the work site for the day. Dirt and dust that contain substances such as lead can settle in the hair and spread by contact between the hands and the hair. Dirt and dust can also infiltrate under and through clothing, especially clothing becoming wet or sweaty.
8. Generally avoid direct contact between the skin and the contaminated soils at the property.

9. Minimize the suspension of dust to the degree possible and specify measures to be taken for minimizing dust. Dust masks should be worn when warranted.

Section 5.0 – Actions to Take if Significant Exposures Occur

Whenever significant exposures to contaminated materials are suspected to have occurred at the property, the following steps must be taken:

1. Immediately remove and decontaminate all personnel.
2. Provide medical surveillance monitoring as needed for personnel.
3. Restrict access to the contaminated area.
4. Perform sampling and analysis as required to determine levels of personal protective equipment, decontamination of personnel and equipment, training needs, medical surveillance and waste management requirements, prior to resuming work at the site.

Section 6.0 – Handling Contaminated Environmental Media (OAC 3745-300-11(F)(1)(d))

During future excavation activities the upper two feet of soil may be temporarily breached, exposing construction or excavation workers to the potentially contaminated underlying soils. Wherever excavation occurs on the property, soils may be reused as fill, provided the potentially contaminated soils below two feet of grade are not co-mingled with soils above that depth, or used as fill within the upper two feet of grade. The presence of a geosynthetic membrane (bentonite-impregnated geofabric) immediately below the two feet of clean surface fill will make it relatively straightforward to identify the contaminated media and to differentiate it from the clean fill.

Soils within the upper two feet of surface grade must be replaced with the materials excavated from that depth interval, or with other clean fill as needed, to restore the clean soil that was within the upper two feet of grade prior to the excavation. This requires that soils excavated from the upper two feet of surface grade be isolated and

temporarily stockpiled separately from other soils, and returned to the upper two feet of the excavation during backfilling operations. Alternatively, if something occurs such that the upper two feet of soil cannot be replaced on the property, other clean soils, such as those from an off-property source, may be used to re-grade the top two feet on the property as long as the soils has been characterized and demonstrated to meet applicable VAP standards. A clean zone of soil from zero to two feet below surface grade must be replaced at the conclusion of the excavation work. Additionally, any geosynthetic membrane material that is removed must be replaced with a patch of similar material (CETCO Bentomat ST or equivalent) placed in accordance with manufacturer's recommendations.

Contaminated soils below two feet of surface grade may be excavated and removed from the property provided that they are properly characterized and disposed of in accordance with applicable laws and regulations.

Section 7.0 – Notice to Contractors and Workers (OAC 3745-300-11(F)(1)(h) and (i))

Whenever construction or excavation workers are reasonably expected to be exposed to soils below two feet of grade, the volunteer, or subsequent owner of the property, is responsible for communicating all the information provided in this RMP to the workers. The volunteer/owner is to communicate the identity of the chemical(s) of concern present on the property, their location on the property and in which media, the potential health effects associated with exposure to said chemicals, the precautions to be taken to avoid exposure, how to handle contaminated media on the property, and actions to be taken should significant exposure occur.

~~A copy of this RMP will be maintained at the property.~~ The property owner will ensure that the plan is made available to contractors and construction/excavation workers, and will ensure that the plan is implemented during excavation below two feet of surface grade.

Section 8.0 – Annual Notification to Ohio EPA (OAC 3745-300-11(F)(1)(j))

Annual reports will be prepared by the property owner and submitted to both the Ohio EPA Central Office and the Ohio EPA Central District Office. The annual report will either describe the activities that were conducted and describe how the RMP was implemented, or report that the RMP was not implemented during the year. Each report will be submitted with an affidavit by an individual with knowledge of the RMP implementation for the year.

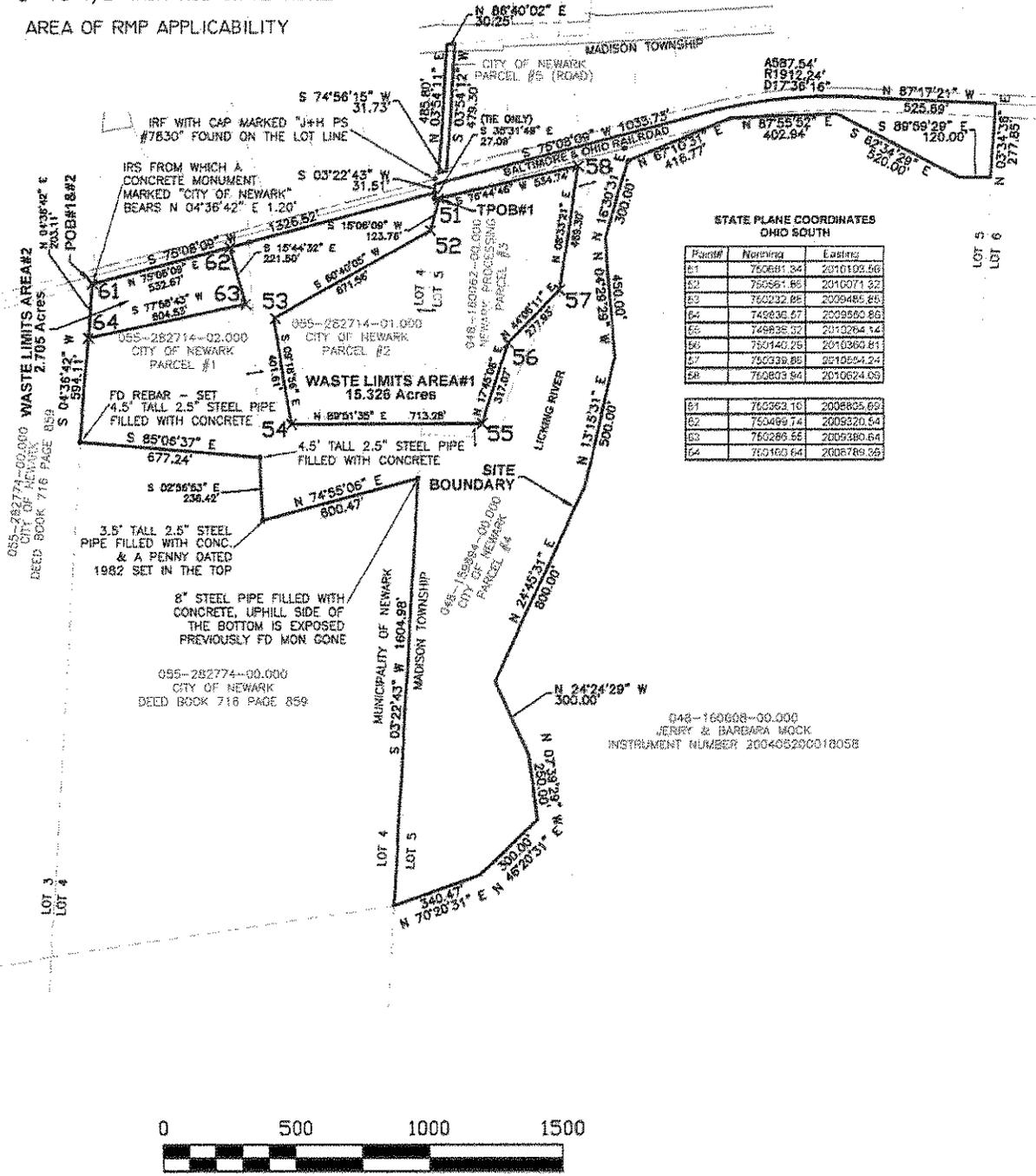
Section 9.0 – Termination Criteria (OAC 3745-300-11(F)(1)(k))

The owner may submit to Ohio EPA a request to terminate the RMP. The request must demonstrate that further implementation of the RMP is no longer necessary for the property to maintain compliance with VAP standards applicable for construction and excavation activities. The demonstration must be verified by a VAP certified professional and include the certified professional's affidavit that attests that the demonstration shows the property complies with the VAP standards for construction and excavation activities without use of risk mitigation measures as a remedial activity under OAC 3745-300-11. The request may present the current property-specific conditions that demonstrate protectiveness to future construction and excavation workers and include any other information in support of the demonstration.

LEGEND

● = FD 1/2" IRON ROD OR AS NOTED

AREA OF RMP APPLICABILITY



**RISK MITIGATION PLAN
NEWARK PROCESSING SITE**

Carnoustie
Consulting, Ltd.
Engineering & Environmental Services

**LOCATION OF RISK
MITIGATION PLAN
APPLICABLE AREA**



Drawn by JPH

Scale as shown

Date: 2/4/2013

Project No.: 10-028

Figure 1



John R. Kasich, Governor
Mary Taylor, Lt. Governor
Scott J. Nally, Director

91 7199 9991 7030 4725 2905

TO: Shelley Wilson, Executive Administrator for Real Property, Tax Equalization Division, Dept. of Taxation

FROM: Scott J. Nally, Director, Ohio Environmental Protection Agency 

DATE: AUG 13 2013

RE: Covenant Not to Sue Issued to City of Newark for the Newark Processing Site Property

As Director of the Ohio Environmental Protection Agency, I certify that [Name of Volunteer(s)] has performed investigational and remedial activities at the property listed below and has been issued a Covenant Not to Sue under the authority of Ohio Revised Code ("ORC") Chapter 3746. This information is being provided in satisfaction of ORC 5709.87(B).

Property name: Newark Processing Site

Property address: 1367 East Main Street, Newark, Ohio, Ohio 43055

Property owner: City of Newark, Ohio

Property owner address: 40 West Main Street, Newark, Ohio 43055

Parcel number(s): 55-282714-02, 55-282714-01, 48-160062-00, 48-159894-00, and 0211NK01900000006100.

County: Licking

Taxing District: Newark City and Licking Valley Local School District

AUG 13 2013

Date Covenant Not to Sue Issued: _____

Attached, for your information, is a copy of the legal description of the property.

If additional information regarding the property or the voluntary action is required, I suggest you first contact Jeffrey Hullinger, the Certified Professional for the property, at 614-467-9252. As an alternative, you may contact Fred Myers with the Ohio Environmental Protection Agency at 614-728-3830.

cc: Mr. Stuart Moynihan, Economic Development Coordinator, Department of Development
City of Newark, 40 West Main Street, Suite 407, Newark, Ohio 43055

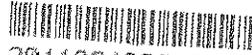
Jeffrey P. Hullinger, Certified Professional, Carnousti Consulting, Ltd. 6012 Kentigern
Court South, Dublin, Ohio 43017

Michael Smith, Licking County Auditor, 20 South Second Street, Newark, Ohio 43055

ec: Amy Yersavich, Manager, SABR
Ann Fischbein, Legal Office, Ohio EPA
DERR-CO, VAP Files [NFA 12NFA481
Deborah Strayton, DERR-CDO
Fred Myers, DERR-CDO
records@epa.state.oh.us

CONDITIONAL APPROVAL FOR THIS TRANSFER
CORRECTION REQUIRED FOR NEXT TRANSFER
TIM LOLLO, LICKING COUNTY ENGINEER

P.M.N. 2/10/11
parcel one - poor beg. ref. pt., no bearings or distances.



201102100002915
Page 4 \$36.00 T20110002762
02/10/2011 2:24PM BAPGB BOX
Ernest R. Long
Licking County Recorder

DESCRIPTION APPROVED TIM LOLLO LICKING COUNTY ENGINEER
APPROVED BY P.M.N. par. 2-5

TRANSFERRED

Date February 10, 2011
M. C. Smith
Licking County Auditor

FORM 666X Warranty Deed

SEC. 319.202 COMPLIED WITH
MICHAEL L. SMITH, AUDITOR
BY RE exA

Know all Men by these Presents

That Newark Processing Co., Inc., an Ohio corporation, by its duly authorized officer, for valuable consideration received, grants with general warranty covenants to The City of Newark, Ohio, a political subdivision in the State of Ohio, whose tax mailing address is 40 West Main Street, Newark, Ohio 43055, the following described real estate:

PARCEL ONE:

Situated in the County of Licking, State of Ohio, and City of Newark and bounded and described as follows:

Beginning at a point at the intersection of the easterly property line of the City of Newark property (deed reference, Volume 716, page 859, of the Deed Records of Licking County, Ohio) and the southerly right-of-way line of the B. & O. Railroad.

Thence Northeasterly, passing along said railroad right-of-way line to a point in the northwest corner of the Newark Processing Company property (deed reference Volume 764, page 585, of said Deed Records); thence Southerly, passing along the westerly line of said Newark Processing Company's property 800 feet, more or less, to a point, thence Westerly, to a point in said City of Newark's easterly property line said point being 600 feet, more or less from said beginning point; thence northerly, passing along said City of Newark's easterly property line 600 feet, more or less, to the place of beginning.

The above described parcel is estimated to contain 10 acres, more or less.

There is also conveyed hereby a non-exclusive right-of-way (50) feet in width extending along the entire southerly line of said Newark Processing Company's property and then north along the west line of said Newark Processing Company's property and then north along the west line of said Newark Processing Company's property until said right-of-way adjoins the southerly line of the above described 10-acre parcel, which right-of-way shall be used for ingress and egress from the above described 10-acre parcel.

Parcel No. 055-282714-02.000

PARCEL TWO:

Situated in the State of Ohio, County of Licking and City of Newark, bounded and described as follows:

Beginning at a point in the common line between the westerly line of Lot 5 of Madison Township and the easterly corporation line of the said City of Newark at its intersection with the southerly right of way line of the B & O Railroad, said point also being the northwest corner of the Newark Supply & Machine Co., Inc. property (deed reference, Volume 631 at page 572 of the Deed Records of said County); thence South 72° 21' 40" West, passing along the said southerly right of way line of the B & O Railroad 729.87 feet to a point, thence South 5° 54' 53" East 1036.35 feet to a point; thence North 72° 05' 59" East 809.47 feet to a point in the said common line between Madison Township and Newark's easterly corporation line, said point also begin in the westerly line of the Metal Development & Consulting Co. property (deed reference, Volume 643 at page 505, of said Deed Records); thence North 1° 00' East, passing along said common line and along the westerly line of said Metal Development & Consulting Co. and the said Newark Supply & Machine Co., Inc. properties, 1067.50 feet to the place of beginning.

Containing 15.46 acres, more or less.

The above description prepared by William B. Henderson, Registered Surveyor #5242, dated July 13, 1977.

Parcel No. 065-282714-01.000

PARCEL THREE:

Situated in the Township of Madison, County of Licking, and State of Ohio;

Situate in Lot #5, Quarter 3, Madison Township, Licking County, Ohio, and being described as follows:

Beginning at an iron stake at the intersection of the center line of the B & O Railroad right-of-way and the west line of Lot #5, said stake being south 3° 00' west a distance of 532 feet from the point where the center line of State Route #16 intersects the west line of Lot #5. Running thence from said beginning point south 3° 00' west a distance of 941 feet along the west line of Lot #5 to an iron stake; thence south 88° 20' east a distance of 300 feet to an iron stake; thence north 11° 50' east a distance of 159 feet to a stake; thence north 22° 50' east a distance of 211 feet to a stake; thence north 30° 30' east a distance of 237 feet to a stake; thence north 1° 00' east a distance of 138 feet to a stake; thence north 17° 20' east a distance of 173 feet to a stake; thence north 30° 00' east a distance of 78 feet to a stake; thence north 11° 15' west a distance of 179 feet to the center of the B & O Railroad right-of-way; thence south 74° 08' west a distance of 560.3 feet along said right-of-way's center line to the point of beginning, containing 10.30 acres.

Subject to the B & O Railroad right-of-way, containing 0.65 of an acre.

Parcel No. 048-160082-00.000

PARCEL FOUR:

Situated in the County of Licking, in the State of Ohio, and in the Township of Madison and bounded and described as follows:

Situated in Lot #5, Quarter 3 and being more particularly described as follows: - Beginning at an iron stake on the West line of Lot #5, located South 3° 00' West, 1,473 feet from the point where the center line of County Highway #585 (Old State Route #16), intersects the West line of Lot #5, and said point being also located South 3° 00' West 941 feet from an iron stake in the center line of the B & O right of way; running thence from said beginning point South 3° 00' West a distance of 1824 feet along the West line of Lot #5 to a point in the Licking River; thence following the Licking River the following courses and distances, North 69° 30' East a distance of 360 feet; thence North 45° 30' East a distance of 300 feet; thence North 8° 30' West a distance of 250 feet; thence North 25° 15' West a distance of 300 feet; thence North 23° 55' East a distance of 800 feet; thence North 12° 25' East a distance of 500 feet; thence North 5° 20' West a distance of 460 feet; thence North 16° 40' East a distance of 300 feet; thence North 66° 20' East a distance of 400 feet; thence North 87° 05' East a distance of 400 feet; thence South 63° 25' East a distance of 620 feet; thence North 89° 10' East a distance of 120 feet to a point on the East line of Lot #5; thence North 2° 55' East a distance of 354.8 feet along the East line of Lot #5, to the center line of the B & O Railroad right of way; thence North 99° 00' West a distance of 407 feet along the center of said railroad to the beginning of a curve to the left, thence along the center said curve a distance of 700 feet to the P.T.; thence South 74° 08' West a distance of 466 feet along said center line to an iron stake at the Northeast corner of 10.30 acres conveyed to The Newark Supply & Machine Co., Inc., Deed Volume 531 page 572; thence following the boundary of said 10.30 acre tract South 11° 15' East a distance of 179 feet; thence South 30° 0' West a distance of 78 feet; thence South 17° 20' West a distance of 173 feet; thence South 1° 0' West a distance of 138 feet; thence South 30° 30' West a distance of 237 feet; thence South 22° 50' West a distance of 211 feet; thence South 11° 50' West a distance of 159 feet; thence North 88° 20' West a distance of 300 feet, to the point of beginning, containing 29.75 acres, subject however, to the B & O Railroad right of way, containing 1.80 acres. This description was prepared by Floyd W. Barnes, Registered Surveyor #3917.

Parcel No. 048-159894-00.000

PARCEL FIVE:

Situated in the State of Ohio, County of Licking and Township of Madison and bounded and described as follows:

Being part of Lot 5, Township 2 and Range 11 of the United States Military Lands and further bounded and described as follows:

Beginning at a spike in the intersection of the west line of Lot 5 and the centerline of County Road 585, said point being the true point of beginning for the following described parcel of land; thence North $86^{\circ} 32' 29''$ East, along the centerline of County Road 585, a distance of 214.16 feet to a spike in the centerline of said County Road; thence South $2^{\circ} 14' 31''$ East, passing an iron pin in the southerly right of way line of County Road 585 at 30.00 feet, a total distance of 426.90 feet to an iron pin in the northerly right of way line of the B. & O. Railroad; thence South $74^{\circ} 50' 13''$ West, along the northerly right of way line of the B. & O. Railroad and passing an iron pin at 258.14 feet, a total distance of 272.39 feet to an iron pin; thence north $3^{\circ} 53' 01''$ East, along the westerly line of Lot 5, a distance of 456.15 feet to the true point of beginning; containing 2.49 acres, more or less.

This description was prepared by William B. Henderson, Registered Surveyor no. 5242 on December 29, 1972.

EXCEPTING 2.156 acres described as follows:

Situated in the State of Ohio, County of Licking, City of Newark, and being 2.156 acres of that 2.49 acre tract as conveyed to Newark Processing Company, Inc., by deed of record in Deed Book Volume 768, Page 1, all references being to those of record in the Recorder's Office, Licking County, Ohio, said 2.156 acre parcel being more particularly bounded and described as follows:

Beginning for reference at the intersection of the west line of Lot 5 and the centerline of County Road 585 (also known as East Main Street);

thence North $86^{\circ} 32' 29''$ East, along said centerline of County Road 585 a distance of 30.26 feet to the True Point of Beginning for the following described 2.156 acre parcel;

thence continuing along said centerline North $86^{\circ} 32' 29''$ East, a distance of 183.90 feet to a point;

thence leaving said centerline South $02^{\circ} 14' 31''$ East, a distance of 426.90 feet to a point on the northerly right-of-way line of B & O Railroad;

thence South $74^{\circ} 50' 13''$ West, along said right-of-way line a distance of 241.15 feet to a point;

thence North $03^{\circ} 53' 01''$ East, a distance of 479.66 feet to the True Point of Beginning and containing 2.156 acres, more or less.

Subject to all valid and existing easements, restrictions, and conditions of record.

The bearings in the above described description are based upon the bearings of record for the Newark Processing Company Inc., 2.488 acre tract of record in Official Record Volume 768, Page 1.

The above description was prepared from available records.

Leaving 0.333 acres, more or less. Said excepted parcel being conveyed to Arthur L. Willis by instrument 199806180023081, Official Record, Licking County, Ohio.

Subject to all valid and existing building and other restrictions and conditions of record, to all valid and existing zoning laws, ordinances and resolutions, to all valid and existing easements of record.

Except for real estate taxes and special assessments, if any.

Last References: Volume 101 Page 476 Official Record, Licking County, Ohio

Volume 764, Page 585, Deed Record, Licking County, Ohio

Volume 613, Page 572, Deed Record, Licking County, Ohio

Volume 814, Page 39, Deed Record, Licking County, Ohio

Volume 768, Page 1, Deed Record, Licking County, Ohio

Property Address: East Main Street, Newark, Ohio 43055

IN WITNESS WHEREOF, the undersigned has set its hand this 28th day of December, 2010

Newark Processing Co., Inc., an Ohio corporation

By: Michael R. Firestone
Michael R. Firestone, President

STATE OF OHIO
LICKING COUNTY, SS:

Before me, a Notary Public, in and for said County and State, personally appeared the above named Newark Processing Co., Inc., an Ohio corporation, by Michael R. Firestone, its President, personally known by me to be the person executing the foregoing instrument, who acknowledged the signing of the same to be his free and voluntary act and deed, and the free and voluntary act and deed of Newark Processing Co., Inc., an Ohio corporation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal at Newark, Licking County, Ohio this 28th day of December, 2010



James R. Cooper
Notary Public

JAMES R. COOPER, Attorney At Law
Notary Public - State of Ohio
My commission has no expiration date
Section 147.06, R.C.

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THIS INSTRUMENT PREPARED BY: MORROW, GORDON & BYRD, Ltd., Attorneys at Law
33 West Main Street, P.O. Box 4190, Newark, Ohio 43058-4190. (740) 345-9611

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