

ENTERED DIRECTOR'S JOURNAL

DEC 20 96

OHIO E.P.A.

Issuance Date: 12/20/96

Effective Date: 12/20/96

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

In The Matter of:	:	
Seven Seventeen HB Philadelphia Corporation NO 2	:	
(a wholly owned subsidiary of HBE Corporation,	:	<u>Covenant Not to Sue</u>
dba Adam's Mark Hotel)	:	
11330 Olive Street Road	:	
St. Louis, Missouri	:	<u>Director's Final</u>
63141	:	<u>Findings and Orders</u>
	:	

Pursuant to Chapter 3746 of the Ohio Revised Code (ORC), the Director of the Ohio Environmental Protection Agency (Director) hereby makes the following findings and issues the following Orders (Orders).

FINDINGS

1. A complete original No Further Action Letter (NFA Letter No. CN00007) was submitted to the Ohio EPA Division of Emergency and Remedial Response on behalf of Mr. Ronald Unterriener and HBE Corporation, on December 3, 1996, by Mr. Russell K. Smith with Lawhon & Associates, Inc. a certified professional (Certified Professional No. CP134) as defined in ORC Section 3746.01(E) (the Certified Professional). (the "NFA")
2. The NFA describes investigational and/or remedial activities undertaken at the property located at 50 North Third Street, Columbus, Franklin County, Ohio (the Property). An exact legal description of the Property is contained in the warranty deed recorded in the Franklin County Recorder's Office in Volume No. ORV30955, at Page No. J09, recorded on January 16, 1996.
3. The investigational and/or remedial activities undertaken by Seven Seventeen HB Philadelphia Corporation NO 2 (a wholly owned subsidiary of HBE Corporation, dba Adam's Mark Hotel), at the Property include:

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

By: [Signature] Date: 12/20

- (a) investigations of interior condition of the existing building, soils and ground water in order to assess environmental conditions related to releases of hazardous substance and petroleum;
- (b) removal and proper disposal of drummed hazardous and non-hazardous wastes from the property;
- (c) removal of friable asbestos from the property in accordance with state, and federal law governing the National Emissions Standards for Hazardous Air Pollutants (NESHAPs);

4. Based upon the information contained in the NFA, the Certified Professional has concluded that the Property meets the applicable requirements contained in ORC Section 3746.04(B)(7)(a)-(e), and Ohio Administrative Code (OAC) rule 3745-300-13, as listed below:

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- (a) ORC Section 3746.04(B)(7)(a): the NFA contains a summary of information required to be submitted by the person undertaking the voluntary action to the Certified Professional;
- (b) ORC Section 3746.04(B)(7)(c): the NFA identifies the contaminants addressed at the Property, the suspected source(s) and levels of contamination prior to remediation;
- (c) ORC Section 3746.04(B)(7)(d): the NFA identifies other persons who performed work to support the request for the NFA and the nature and scope of work which they performed;
- (d) ORC Section 3746.04(B)(7)(f): the NFA includes a list of data, information, records, and documents relied upon by the Certified Professional in preparing the NFA.

- 5. The Certified Professional has verified that the investigational and/or remedial activities undertaken at the Property comply with the standards established in ORC Section 3746.07(A) and OAC Chapter 3745-300.
- 6. Fire & Environmental Consulting Laboratories, Inc. (Certified Laboratory No. CL 0002) is a certified laboratory as defined in ORC Section 3746.01(D) and OAC Section 3745-300-04.
- 7. According to information provided in the NFA, Fire & Environmental Consulting Laboratories, Inc. performed analyses for which it is qualified, that formed the bases for the issuance of the NFA as determined by the Certified Professional.

8. No land use restriction has been placed on the Property described in the NFA, and, based on the information contained in the NFA, the Property meets the applicable standards for unrestricted use.
9. Based on the information contained in the NFA, the Director has determined that the issuance of a Covenant Not to Sue for the Property is protective of human health, safety and the environment.

ORDERS

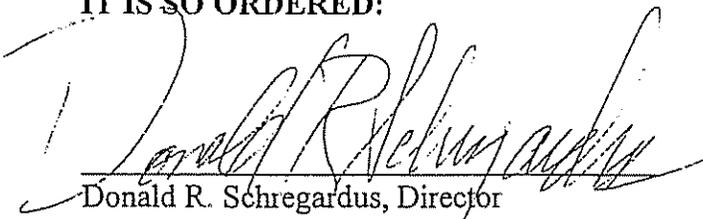
1. Upon the effective date of these Orders, and subject to the conditions outlined below, the Ohio EPA hereby releases and covenants not to sue Seven Seventeen HB Philadelphia Corporation NO 2 (a wholly owned subsidiary of HBE Corporation, dba Adam's Mark Hotel), or its agents, employees, shareholders, officers, directors, successors or assigns, from all civil liability to the State to perform additional investigational and/or remedial activities to address the releases of hazardous substances or petroleum addressed through the Phase I and Phase II property assessments completed in accordance with ORC Chapter 3746.
2. The NFA and the Covenant provided in these Orders may be transferred to any person by assignment or in conjunction with the acquisition of title to the Property.
3. The NFA, and the Covenant provided in these Orders, shall be filed in the Office of the County Recorder of Franklin County, Ohio, in the same manner as a deed to the Property.

Conditions of and Limitations on the Covenant

1. This Covenant shall only apply to the Property described in the NFA upon which the investigational and/or remedial activities specified in the NFA were conducted.
2. Pursuant to ORC Section 3746.12(B), this Covenant shall remain in effect for as long as the Property to which this Covenant pertains continues to comply with the applicable standards upon which this covenant is based, as outlined in Finding No's. 1 through 8 above.
3. This Covenant shall not apply to releases of hazardous substances or petroleum:
 - (a) which occur after the submittal of the NFA to Ohio EPA, or OHIO E.P.A.
 - (b) on or emanating from the Property which are not described in the NFA, 86

- (c) for which investigational and/or remedial activities were conducted which were not in compliance with ORC Chapter 3746.
4. This Covenant shall not apply to:
- (a) claims for natural resource damages the State may have pursuant to Sections 107 or 113 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), 42 U.S.C. Sections 9607 and 9613, as amended; or
 - (b) claims the State may have pursuant to Section 107 of CERCLA, 42 U.S.C. Section 9607, as amended, for costs other than those for damages to natural resources, provided that the State incurs those other costs as a result of an action by the United States Environmental Protection Agency; or
 - (c) as otherwise specifically provided in ORC Chapter 3746.
5. Nothing in ORC Chapter 3746 limits the authority of the Director to act under ORC Sections 3734.13 and 3734.20 to 3734.23, or to request that a civil action be brought pursuant to the ORC or common law of the State to recover the costs incurred by Ohio EPA for investigating or remediating a release or threatened release of hazardous substances or petroleum at or from a property where a voluntary action is being or has been conducted under ORC Chapter 3746. and the rules adopted thereunder, when the Director determines that the release or threatened release poses an imminent and substantial threat to public health or safety or the environment.
6. Nothing in this Covenant shall be construed to limit and/or waive the Director's authority to revoke this Covenant pursuant to any of the circumstances for revocation of a Covenant, as provided in ORC Chapter 3746.

IT IS SO ORDERED:



Donald R. Schregardus, Director
Ohio Environmental Protection Agency

12/20/96
Date

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