

AUG 14 97

OHIO E.P.A.

Issuance Date: AUG 14 1997

Effective Date: AUG 14 1997

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

In The Matter of:

Nakki Partners	:	<u>Covenant Not to Sue</u>
(formerly known as the Chemserv	:	
Environmental Company property)	:	
5055 Nike Dr.	:	
Columbus, Ohio	:	<u>Director's Final</u>
	:	<u>Findings and Orders</u>
	:	

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

FINDINGS

1. An original No Further Action Letter ("NFA Letter No. CN00011" or the "NFA letter") was submitted to the Ohio EPA Division of Emergency and Remedial Response on behalf of Mr. Frank Cipriano and Mr. Sidney Blatt of Nakki Partners, on December 12, 1996, by Mr. Mark Butler, a certified professional (No. CP 137) as defined in ORC Section 3746.01(E) (the "Certified Professional").
2. The NFA Letter describes investigational and/or remedial activities undertaken at the 5.246 acre tract of land located at 5055 Nike Drive, Columbus, Norwich Twp., 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. 11405, at Page No. C-19, attached hereto as Exhibit A.
3. Supplemental information, dated May 5, 1997, regarding RCRA generator closure was submitted by the Certified Professional to the Division of Hazardous Waste Management, Central District Office (DHWM-CDO) and was determined to be complete and satisfactory by DHWM-CDO on or before June 16, 1997. ("Supplemental Information to NFA Letter No. CN00011")

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: Chandler Pleasant Date 8-14-97

OHIO E.P.A.
AUG 14 97
ENTERED DIRECTOR'S JOURNAL

4. Supplemental information, dated July 30, 1997, regarding investigation activities on the Property was submitted by the Certified Professional to the Ohio EPA Division of Emergency and Remedial Response. ("Supplemental Information to NFA Letter No. CN00011")
5. The investigational and/or remedial activities undertaken by Nakki Partners, at the Property include:
 - (a) investigations of soil and ground water to assess environmental conditions related to releases of hazardous substances and petroleum;
 - (b) a land use restriction on the Property which is recorded in the Office of the County Recorder of Franklin County, Ohio, in Volume No. 33797, at Page No. D20, recorded on December 9, 1996 which restricts the uses of the property to industrial, light industrial and nonretail commercial and heavy industrial uses, attached hereto as Exhibit B.
6. Based upon the information contained in NFA Letter No. CN00011, and the Supplemental Information to NFA Letter No. CN00011, the Certified Professional has concluded that the Property meets the requirements contained in ORC Section 3746.04(B)(7)(a)-(e), and Ohio Administrative Code (OAC) rule 3745-300-13, as listed below:
 - (a) NFA Letter No. CN00011 contains a summary of information required to be submitted by the person undertaking the voluntary action to the Certified Professional;
 - (b) NFA Letter No. CN00011 includes a notification that a risk assessment was performed in lieu of using numerical clean-up standards. NFA Letter No. CN00011 also states that the risk assessment was performed in accordance with the document entitled Risk Assessment Guidance for Superfund, Volume I, Human Health Evaluation Manual (Part A), United States Environmental Protection Agency, December, 1989;
 - (c) NFA Letter No. CN00011, and the Supplemental Information to NFA Letter No. CN00011, identify the contaminants at the Property, the suspected source(s) and levels of each contaminant;
 - (d) NFA Letter No. CN00011 identifies other persons who performed work to support the request for NFA Letter No. CN00011 and the nature and scope of work which they

OHIO E.P.A.
AUG 14 97
ENTERED DIRECTOR'S JOURNAL

performed; and

- (e) NFA Letter No. CN00011 includes a list of data, information, records, and documents relied upon by the Certified Professional in preparing NFA Letter No. CN00011.
7. 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 and OAC Chapter 3745-300.
 8. DLZ Laboratories, Inc. (Certified Laboratory No. CL 00018) is a certified laboratory as defined in ORC Section 3746.01(D).
 9. According to information provided in NFA Letter No. CN00011, and the Supplemental Information to NFA Letter No. CN00011, DLZ Laboratories, Inc. was qualified to perform the analyses of hazardous substances and petroleum, which formed the basis for the issuance of NFA Letter No. CN00011 as determined by the Certified Professional.
 10. Based on the information contained in NFA Letter No. CN00011, and the Supplemental Information to NFA Letter No. CN00011, 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 Nakki Partners, 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. NFA Letter No. CN00011, Supplemental Information to NFA Letter No. CN00011, 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.

AUG 14 97

OHIO E.P.A.

3. NFA Letter No. CN00011, Supplemental Information to NFA Letter No. CN00011, or a summary of the NFA Letter as approved by Ohio EPA, 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

117

1. This Covenant shall only apply to the Property described in NFA Letter No. CN00011, upon which the investigational and/or remedial activities specified in NFA Letter No. CN00011, and the Supplement to NFA Letter No. CN00011, 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 10 above.
3. This Covenant shall not apply to releases of hazardous substances or petroleum:
 - (a) which occur after the submittal of NFA Letter No. CN00011 to Ohio EPA, or
 - (b) on or emanating from the Property which are not described in NFA Letter No. CN00011, as supplemented, or
 - (c) for which investigational and/or remedial activities were conducted that 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

AUG 14 97

OHIO E.P.A.

- (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 and OAC Chapter 3745-300.

IT IS SO ORDERED:

Donald R. Schregardus
Donald R. Schregardus, Director
Ohio Environmental Protection Agency

8/13/97
Date

EXHIBIT A

Legal Description of the Site Located at 5055 Nike Drive, Columbus, Ohio from General Warranty Deed #11405C19 filed April 8, 1988.

Parcel Number 560-160653 (Franklin County, 1988).

"Situated in the County of Franklin, State of Ohio, and in the City of Columbus, and being a part of Virginia Military Survey No. 5239, 5241 and 7065, and more particularly described as follows:

Being Lot Number Nine (9) (5.246 acres) of the WALCUTT INDUSTRIAL PARK, as the same is numbered and delineated upon the recorded plat thereof, of record in Plat Book 45, pages 40, 41 and 42, Recorder's Office, Franklin County, Ohio."

OHIO E.P.A.
AUG 14 97

ENTERED DIRECTOR'S JOURNAL

DECLARATION
OF
PROTECTIVE COVENANTS AND RESTRICTIONS

RECORDED

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OHIO E.P.A.

CHARD B. METCALF, RECORDER
FRANKLIN COUNTY, OHIO

Nakki Partners, an Ohio General Partnership (hereinafter, "Nakki Partners"), represents and declares that it is the owner in fee simple of the real estate described on an attachment hereto, marked Exhibit "A", and incorporated by reference herein (the "property"), and further declares, pursuant to Chapter 3746 of the Revised Code, that the following protective covenants and restrictions ("Use Restrictions") hereinafter set forth are to run with the land and shall be binding upon all parties and all persons hereafter acquiring any ownership interest in or to the Property, or any part thereof, or having or claiming under or having any title derived immediately or remotely from or through such persons, their heirs, executors, administrators, successors or assigns, to-wit:

Restrictive Covenant

The Property may be used only for industrial, light industrial and nonretail commercial and heavy industrial uses. This restrictive covenant is declared in furtherance of Section 3746 10(C) of the Revised Code.

For violation or breach of the foregoing Use Restriction, Nakki Partners, as well as the Ohio Environmental Protection Agency, shall have the right to proceed at law or in equity to compel compliance with the terms hereof or to obtain injunctive relief in order to prevent violation or breach of the foregoing Use Restriction. Failure to timely enforce the foregoing covenant and Use Restriction by any party shall not bar subsequent enforcement by such party and shall in no manner be deemed a waiver.

If the Property is used in any manner inconsistent with the Use Restriction herein, any Covenant Not to Sue which may be issued regarding the Property by the Ohio Environmental Protection Agency will be void on and after the commencement of any nonconforming use.

This instrument is to be recorded in the Office of the Franklin County Recorder pursuant to Sections 3746.10(C) and 317.08(A) of the Revised Code, and shall be deemed incorporated by reference in any further deed of conveyance of or to the Property, or any part thereof.

IN WITNESS WHEREOF, Nakki Partners, owner of the Property, has hereunto subscribed its name this 9th day of December, 1996

Signed in the Presence of:

NAKKI PARTNERS, an Ohio General Partnership

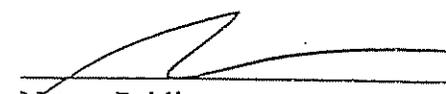
Amy S. Bartermer
Sherrill Ouellet

By: Frank J. Cipriano
Frank J. Cipriano, General Partner

STATE OF OHIO, FRANKLIN COUNTY, SS:

BEFORE ME, a Notary Public in and for said County and State, personally appeared the above named Nakki Partners, an Ohio General Partnership, by Frank J. Cipriano, its General Partner, who acknowledged that he did sign the foregoing instrument and that same is his free act and deed of him personally and as such General Partner.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal at Columbus, Ohio, this 9th day of December, 1996.



Notary Public

STANLEY H. SHAYNE, Attorney at Law
Notary Public, State of Ohio
My Commission has no expiration date
Section 147.03 R.C.

This Instrument Prepared By:

Donell R. Grubbs
Shayne & Greenwald Co., L.P.A.
221 South High Street
Columbus, OH 43215

OHIO E.P.A.
AUG 14 97

ENTERED DIRECTOR'S JOURNAL

EXHIBIT "A"

Situated in the County of Franklin, in the State of Ohio, and in the City of Columbus, having an address located at 5055 Nike Drive, Columbus, Ohio 43026, and described as follows:

Being Lot Number Nine (9) of the Walcutt Industrial Park, as the same is numbered and delineated upon the recorded plat thereof, of record in Plat Book 45, Pages 40, 41, and 42, Recorder's Office, Franklin County, Ohio.

Containing 5.246 acres. Subject to all legal highways, easements, leases or other restrictions of record

Parcel No. 560-160653.

Prior Ref. - Official Record 11405, page C19.

OHIO E.P.A.

AUG 14 97

ENTERED DIRECTOR'S JOURNAL