

ENTERED DIRECTOR'S JOURNAL

MAY 22 97

OHIO EPA

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OHIO EPA/CDO

BEFORE THE  
OHIO ENVIRONMENTAL PROTECTION AGENCY

In The Matter of:

The Keethler Company  
7870 Olentangy River Road, Suite 200  
West Worthington, Ohio 43235

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Covenant Not to Sue

Director's Final  
Findings and Orders

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

FINDINGS

1. An original No Further Action Letter ("NFA Letter No. CN00010" or the "NFA Letter") was submitted to the Ohio EPA Division of Emergency and Remedial Response on behalf of Mr. William W. Keethler and The Keethler Company on December 10, 1996, by Mr. Russell K. Smith with Lawhon & Associates, Inc., a certified professional ("Certified Professional No. CP134" or "Certified Professional") as defined in ORC Section 3746.01(E). Addenda to the NFA letter were submitted by Mr. Smith on March 5, 1997 and April 15, 1997.
2. The NFA Letter describes investigational activities undertaken at the 2.31 acre property located at 800 Tussic Street Road, in the city of Westerville, Delaware County, Ohio (the "Property"). An exact legal description of the Property is contained in Attachment A to these Orders. The Property is a subparcel of a 110 acre parcel conveyed to Otterbein College as recorded in Deed Book No. 299, Page No. 439 of the Delaware County Recorder's Office, Delaware County, Ohio.
3. The investigational activities undertaken by The Keethler Company, at the Property include:
  - (a) a Phase I Property Assessment conducted in accordance with ORC Section 3746.07(B), ASTM Standard Practice for Phase I Environmental Site Assessments, E 1527, for environmental conditions related to releases of

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 5/22/97

hazardous substances and petroleum;

- (b) several searches of the Property with metal detectors and excavation of test pits at selected locations to investigate for military ordnance and materials used in manufacturing them; and
  - (c) limited sampling of soils and ground water from one location on the Property.
4. Based on investigative activities described in the NFA Letter and identified in Finding No. 3, the Certified Professional has concluded that there is no evidence of disposal of explosives or ordnance on the Property, although such materials were located on adjacent property.
5. Fire Environmental Consulting Laboratories, Inc., ("Certified Laboratory No. CL0002"), is a certified laboratory as defined in ORC Section 3746.01(D).
6. According to information provided in the NFA Letter, Fire Environmental Consulting Laboratories performed analyses for which it is qualified, that, in part, formed the basis for the issuance of the NFA Letter, as determined by the Certified Professional.
7. Based upon the information contained in the NFA Letter, the Certified Professional has concluded that the Property meets the applicable requirements contained in ORC Section 3746.04(B)(7)(a)-(e), and OAC rule 3745-300-13, as listed below:
  - (a) ORC Section 3746.04(B)(7)(a): the NFA Letter 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 Letter identifies any potential source(s) of contaminants at the Property;
  - (c) ORC Section 3746.04(B)(7)(d): the NFA Letter identifies other persons who performed work to support the request for the NFA Letter and the nature and scope of work which they performed; and
  - (d) ORC Section 3746.04(B)(7)(e): the NFA Letter includes a list of data, information, records, and documents relied upon by the Certified Professional in preparing the NFA Letter.
8. The Certified Professional has verified that the investigational remedial activities undertaken at the Property comply with the standards established in ORC Section 3746.07(A) and OAC Chapter 3745-300.

9. No land use restriction has been placed on the Property described in the NFA Letter, and, based on the information contained in the NFA Letter, the Property meets the applicable standards contained in ORC Section 3746.07 for unrestricted land use.
10. Based on the information contained in the NFA Letter, 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 The Keethler Company, 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 property assessment completed in accordance with ORC Chapter 3746.
2. The NFA Letter 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 Letter and the Covenant provided in these Orders shall be filed in the Delaware County Recorder's Office, Delaware County, Ohio, in the same manner as a deed to the Property.

### Conditions of and Limitations on the Covenant

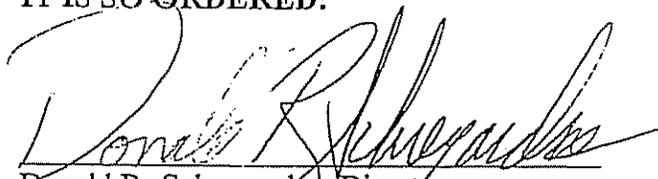
1. This Covenant shall only apply to the Property described in the NFA Letter upon which the investigational and/or remedial activities specified in the NFA Letter were conducted.
2. Pursuant to ORC Section 3746.12(B), this Covenant shall remain in effect for as long as the Property to which this Covenant pertains continues to comply with the applicable standards upon which this covenant is based, as outlined in Finding Nos 1 through 10 above.
3. This Covenant shall not apply to releases of hazardous substances or petroleum:
  - (a) which occur after the submittal of the NFA Letter to Ohio EPA; or
  - (b) on or emanating from the Property and which are not described in the NFA Letter; or

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- (c) for which investigational and/or remedial activities were conducted that were not in compliance with ORC Chapter 3746 and OAC Chapter 3745-300.
- 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 OAC Chapter 3745-300, 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 or OAC Chapter 3745-300.

IT IS SO ORDERED:



Donald R. Schregardus, Director  
Ohio Environmental Protection Agency, OHIO E.P.A.

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Date

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**PROPERTY DESCRIPTION, THE KILGORE FARM, SOUTHWEST 2.31 ACRES**

Situated in the State of Ohio, County of Delaware, City of Westerville, in Lot 9, Quarter Township 4, Township 3 North, Range 17 West, United States Military Lands and being 2.313 acres of land out of a 110 acre tract of land conveyed to Otterbein College by deed of record in Deed Book 299, Page 439 Recorder's Office, Delaware County, Ohio, and bounded and described as follows:

Beginning at a 1" solid iron pin found at the southwest corner of said 110 acre tract, at the northwest corner or a 99.164 acre tract conveyed to The Board of Education of The Westerville City School District by deed of record in Deed Book 378, Page 417, Recorder's Office, Delaware County, Ohio, at the southwest corner of said Lot 9, at the northwest corner of Lot 12 and in the centerline of North Spring Road (60 feet in width), said iron pin being, N 4° 11' 27" E a distance of 1,782.10 feet from Franklin County Monument Box No. 3318 found at the centerline of North Spring Road with County Line Road;

thence N 4° 11' 27" E along a portion of the west line of said 110 acre tract and along the centerline of North Spring Road a distance of 310.00 feet to a railroad spike set;

thence S 85° 51' 11" E crossing a portion of said 110 acre tract parallel with and 310.00 feet northerly by perpendicular measurement from the south line of said 110 acre tract and a north line of said 99.164 acre tract a distance of 325.00 feet to a 3/4" I.D. iron pipe set (passing a point in the existing east right-of-way line of North Spring Road at 30.00 feet and passing a 3/4" I.D. iron pipe set in the proposed east right-of-way of North Spring Road at 40.00 feet);

thence S 4° 11' 27" W crossing a portion of said 110 acre tract parallel with and 325.00 feet easterly by perpendicular measurement from the west line of said 110 acre tract and the centerline of North Spring Road a distance of 310.00 feet to a 3/4" I.D. iron pipe set in the south line of said 110 acre tract and in a north line of said 99.164 acre tract;

thence N 85° 51' 11" W along a portion of the south line of said 110 acre tract and along a portion of a north line of said 99.164 acre tract a distance of 325.00 feet to the place of beginning (passing a 3/4" I.D. iron pipe set in the proposed east right-of-way line of North Spring Road at 285.00 feet and passing a point in the existing east right-of-way line of North Spring Road at 295.00 feet);

containing 2.313 acres of land more or less and being subject to all easements, right-of-ways and restrictions of record.

The above description was prepared by Kevin L. Baxter, Ohio Surveyor No. 7697, of C.F. Bird & R.J. Bull, Inc., Consulting Engineers & Surveyors, Columbus, Ohio, from an actual field survey performed under his supervision in September, 1996.

OHIO E.P.A. Basis of bearings is the centerline of Spring Road, being N 4° 11' 27" E, as shown of record in Deed Book 378, Page 417, Recorder's Office, Delaware County, Ohio.

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