

OHIO E.P.A.

MAY -8 2000

ENTERED DIRECTOR'S JOURNAL

Issuance Date: MAY 08 2000

Effective Date: MAY 08 2000

**BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY**

In The Matter of:

**Pizzuti Properties/Miranova Limited
250 East Broad Street
Columbus, OH 43215**

**Amended
Covenant Not to Sue**

**Amended
Director's Final Findings
and Orders**

**Regarding property known as
Miranova (Residential Portion)
270 West Mound Street
Columbus, OH 43215**

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.

FINDINGS

1. On December 29, 1999, Director's Final Findings and Orders and a Covenant Not to Sue were issued to Pizzuti Properties/Miranova Limited ("Volunteer") regarding the approximately 2.273 acre property currently known as Miranova (residential portion) located at 270 West Mound Street in Columbus, Franklin County, Ohio (the "Property").
2. Attached to the December 29, 1999, Director's Final Findings and Orders and Covenant Not to Sue, and incorporated by reference therein, is an Operation and Maintenance Agreement, executed by the Volunteer on December 17, 1999 and by the Director on December 29, 1999 (the "Agreement"), and an Operation and Maintenance Plan, dated December, 1999 (the "Plan").

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: Joseph J. [Signature] Date: 05/08/00

Amended Director's Final Findings & Orders
Amended Covenant Not to Sue
Pizzuti Properties/Miranova Limited
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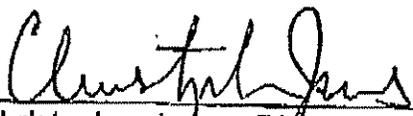
ENTERED DIRECTOR'S JOURNAL

3. By letter dated May 1, 2000, the Volunteer requested that the Agreement and the Plan be modified to authorize the removal of the fence engineering control and the establishment of a surveillance access restriction engineering control. A copy of the May 1, 2000 modification request is attached hereto as Exhibit A.
4. Removal of the fence engineering control and the establishment of a surveillance access restriction engineering control, as set forth in the modified Operation and Maintenance Agreement and modified Operation and Maintenance Plan, would be protective of human health, safety and the environment.

ORDERS

1. The Director's Final Findings and Orders and Covenant Not to Sue issued to the Volunteer on December 29, 1999 are hereby amended to authorize the removal of the fence engineering control and the establishment of a surveillance access restriction engineering control, as set forth in the modified Operation and Maintenance Agreement and the Modified Operation and Maintenance Plan, which are hereby approved. The Modified Operation and Maintenance Agreement is attached hereto as Exhibit B and incorporated by reference herein.
2. A copy of these Findings and Orders, including Exhibits A and B hereto, shall be recorded in the Franklin County Recorder's Office in the same manner as a deed to the Property, within sixty (60) days of the effective date of these Findings and Orders.
3. With the exception of the approved modifications to the Agreement and the Plan, as set forth in Order number 1 of these Amended Findings and Orders, the Director's Final Findings and Orders and Covenant Not to Sue, issued to the Volunteer on December 29, 1999, remain unchanged and in full force and effect.

IT IS SO ORDERED:



Christopher Jones, Director
Ohio Environmental Protection Agency

5/8/00
Date

Exhibit A

PIZZUTI

RECEIVED

MAY 1 2000

DIV. OF SUPERVISION &
REGULATION

THE PIZZUTI COMPANIES

COLUMBUS
250 East Broad Street
Columbus, Ohio 43215
Phone: 614-280-4000
Fax: 614-280-5000

ORLANDO
255 South Orange Avenue
Orlando, Florida 32801
Phone: 407-841-0000
Fax: 407-841-0900

CHICAGO
One Mid America Plaza
Oakbrook Terrace, Illinois 60181
Phone: 630-472-9595
Fax: 630-472-9590

WEB SITE
www.pizzuti.com

May 1, 2000

Mr. Christopher Jones
Director
Ohio Environmental Protection Agency
Lazarus Government Center
P.O. Box 1049
Columbus, Ohio 43216-1049

RE: Modifications to Operation and Maintenance Plan and Agreement for the No Further Action Letter, Residential Portion of Miranova Property, Pizzuti Properties/Miranova Limited, Columbus, Ohio

Dear Mr. Jones:

Pizzuti Properties/Miranova Limited (Pizzuti) is requesting that the Operation and Maintenance Plan (O & M Plan), and Operation and Maintenance Agreement (O & M Agreement) under the Covenant Not to Sue dated December 29, 1999, be modified pursuant to the attached language for the Miranova property (Property). The modifications are being requested in accordance with Section 4.0 of the O & M Plan. Through submittal of this letter, modifications are being proposed to Section 2.0-Interim Plan of the O & M Plan and Section 4.1.a of the O & M Agreement.

During construction, the Interim Plan of the O & M Plan calls for a fence to be used as an engineering control to restrict access to the Property. The fence is used to keep people from residing on the Property until the Voluntary Action Program (VAP) residential standards are met for this Property. However, there will be approximately a three-week period when the fence needs to be removed in order to complete the final grading of the Property to meet the 2.5 point of compliance (POC). When the POC is completed, the Property will meet all the VAP residential standards, and Section 3.0-Final Plan of the O & M Plan, will take effect.

The fence is scheduled to be removed on May 4, 2000. Therefore, Pizzuti is requesting that the O & M Plan be modified to use a security guard to keep people from residing on the Property in lieu of the fence during non-construction hours. The security guard, an off-duty Columbus police officer, will be posted at the Property from the hours of 5pm to 6am Monday through Friday, and all hours on the weekends. As discussed above, this engineering control will be in place until the all

Mr. Christopher Jones
May 1, 2000
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the VAP residential standards are met for the Property, at which time the Section 3.0-Final Plan of the O & M Plan will be in place. During construction activities, the Property will be monitored by the construction supervisor as part of his normal supervisory duties at the construction site.

If you have any questions regarding this proposed modification, please call me at (614) 280-4006. Thank you for your attention in this matter.

Sincerely,



Richard Daly
Executive Vice President

RCD/nsm
Attachment

cc: Mary Kay Connor, Pizzuti
Craig A. Kasper, HAI
Larry S. Smith, HAI

**Affidavit Pursuant to Ohio Administrative Code
3745-300-13(O)**

The undersigned, being duly sworn and possessing sound mind, states the following:

My name is: Richard C. Daley

The Property where voluntary action(s) is being conducted is as follows: Name of Property: Miranova

Address: 270 West Mound Street
Columbus, Ohio

The purposes for which the information, data, documents, or reports are being submitted is: Modify the Operation & Maintenance Plan and the Operation & Maintenance Agreement

The information, data, documents or reports submitted with the affidavit is as follows: Letter to the Director of the Ohio Environmental Protection Agency; Modified Operation & Maintenance Plan; and Modified Operation & Maintenance Agreement regarding the Residential Portion of the Miranova Property.

IN WITNESS WHEREOF, I attest that all information, data, documents or reports described above and submitted to Hull & Associates, Inc. are true, accurate and complete. Further affiant's sayeth nought.

Affiant: [Signature]
Signature

Date: May 1, 2000

The foregoing was sworn and signed in my presence on this 1st day of May month of 2000.

[Signature]
Notary Public

May 1, 2000
Date



MARY KAY CONNOR
NOTARY PUBLIC, STATE OF OHIO
MY COMMISSION EXPIRES SEPT. 19, 2003

**MODIFIED OPERATION AND MAINTENANCE PLAN
BETWEEN
THE OHIO ENVIRONMENTAL PROTECTION AGENCY AND
PIZZUTI PROPERTIES/MIRANOVA LIMITED
REGARDING THE MIRANOVA (RESIDENTIAL PORTION) PROPERTY
LOCATED IN FRANKLIN COUNTY, OHIO
MAY 1, 2000**

The Operation and Maintenance Plan ("Plan") entered into on December 29, 1999 by the Director of the Ohio Environmental Protection Agency ("Director") and Pizzuti Properties/Miranova Limited, an Ohio limited liability company ("Pizzuti"), is hereby modified pursuant to Section 4.0 of the Plan, as follows.

This new section follows Section 2.1.2 of the Plan:

2.1.3 Engineering Control: Surveillance Access Restriction

Beginning on or about May 4, 2000, the fence engineering control established under Section 2.1.1 of this Plan will be dismantled and removed to facilitate the completion of activities required for the establishment of the soil cover point of compliance engineering control and building foundation engineering control, and swimming pool foundation engineering control as set forth in Section 3.1 of this Plan.

Upon commencement of the dismantling and removal of the fence engineering control, a surveillance access restriction engineering control will be established at the Property. The surveillance access restriction engineering control will consist of monitoring by a security guard or the construction supervisor on a continuous basis to restrict access to the Property by persons other than authorized personnel. Under normal circumstances, the security guard will be stationed at the Property from 5:00 p.m. to 6:00 a.m. on each day from Monday afternoon through Friday morning, from 5:00 p.m. Friday to 6:00 a.m. Monday, and at any other time, including holidays and rain days, when the construction supervisor is not present at the Property. The Property will normally be monitored by the construction supervisor from 6:00 a.m. to 5:00 p.m. on each day from Monday through Friday.

Installation of the building foundation engineering control, the swimming pool foundation engineering control, and the soil cover point of compliance engineering control, and inspection of the controls to verify that the criteria set forth in Sections 3.1.1., 3.1.2., and 3.1.3. of this Plan have been met, will be completed within 90 days of the installation of the surveillance access restriction engineering control.

This new section follows Section 2.2.2 of the Plan:

2.2.3 Engineering Control: Surveillance Access Restriction

Potential problems identified for this interim remedy include shift change delays and, unanticipated interruptions in personnel scheduling (including sick leave, late arrivals and other circumstances).

In the event of such problems, the security guard or the construction supervisor assigned to the previous shift will remain on the Property until relieved of duty, and will make appropriate arrangements for such replacement.

This new section follows Section 2.3.2 of the Plan:

2.3.3 Engineering Control: Surveillance Access Restriction

At the beginning of each shift, the security guard or construction supervisor will complete a monitoring log indicating his or her name, his or her time of arrival, and the name of the security guard or construction supervisor who is being relieved. At the conclusion of each shift, the security guard or construction supervisor will complete the monitoring log indicating his or her time of departure, and the name of the security guard or construction supervisor who is providing relief, and indicate whether any incident occurred during the shift. If any such incident occurred, the security guard or construction supervisor will complete an incident report.

The final paragraph of Section 2.4 is deleted and replaced with the following new section:

2.4.1 Engineering Control: Surveillance Access Restriction

Within 60 days of termination of the surveillance access restriction engineering control, the signed monitoring logs and incident reports will be submitted to Ohio EPA.

The requirement to maintain the surveillance access restriction engineering control will terminate when the inspection of the building foundation engineering control, the swimming pool foundation engineering control, and the soil cover point of compliance engineering control has been completed in accordance with Section 2.1.3 of this Plan, and the final engineering and institutional controls have been established in accordance with Section 3.0 of this Plan.

Within the 60 day time frame, a report will be submitted to Ohio EPA as an addendum for placement in Appendix A in this Plan, documenting the final placement of the engineering controls described in Section 3.0. The report will contain record drawings, including contractors' as-built drawings of the building foundation and swimming pool foundation engineering controls, a description of the activities related to the establishment of the soil cover POC, and survey documentation and final elevations at each location.

**MODIFIED OPERATION AND MAINTENANCE AGREEMENT
BETWEEN
THE OHIO ENVIRONMENTAL PROTECTION AGENCY AND
PIZZUTI PROPERTIES/MIRANOVA LIMITED
REGARDING THE MIRANOVA (RESIDENTIAL PORTION) PROPERTY
LOCATED IN FRANKLIN COUNTY, OHIO**

The Operation and Maintenance Agreement ("Agreement") entered into on December 29, 1999 by the Director of the Ohio Environmental Protection Agency ("Director") and Pizzuti Properties/Miranova Limited, an Ohio limited liability company ("Pizzuti"), is hereby modified pursuant to Section 11 of the Agreement, as follows.

Paragraph (a) of Section 4.1, entitled "Interim Plan: Construction Phase of Property (Non-residential phase)," is deleted and replaced with the following:

- (a) **Engineering Control.** An engineering control will restrict access to the Property by persons other than authorized personnel. Persons other than construction contractor employees are assumed to be present at the Property for limited periods of time, and are thus assumed to have exposures at the Property which are encompassed by the exposure of the construction worker. Previously, the engineering control consisted of a fence enclosing the entire Property and restricting access to the Property. Beginning on or about May 4, 2000, the fence will be removed to allow the establishment of the soil cover point of compliance on the Property, as set forth in Section 3.1.3 of the OMP. Beginning on the day the fence is removed and continuing until the establishment of the building foundation engineering control, the swimming pool foundation engineering control, and the soil cover point of compliance engineering control, as set forth in Sections 3.1.1., 3.1.2., and 3.1.3. of the OMP, respectively, the Property will be monitored on a continuous basis by a security guard or the construction supervisor to restrict access to the Property by persons other than authorized personnel, in accordance with Section 2.5 of the OMP. The Current Owner/designee will ensure the restriction of public access until the establishment of the building foundation engineering control, the swimming pool foundation engineering control, and the soil cover point of compliance engineering control, and completion of the installation of the final engineering and institutional controls, as described in Paragraph 4.2 of this Agreement. The surveillance access restriction engineering control will be monitored and maintained in accordance with the modified OMP, and the Current Owner/ designee will ensure the restriction of public access until such time that the construction activities and establishment of the final engineering and institutional controls are complete, as described in Paragraph 4.2 of this Agreement.

With the exception of the foregoing modifications to the Agreement and corresponding modifications to the Plan, the Agreement and Plan remain unchanged and the Agreement continues to constitute a valid and binding obligation enforceable in accordance with its terms.

Authorized Signatories. Each undersigned representative of a signatory to this Modified Agreement represents that he or she is fully authorized to execute this Modified Agreement and that upon execution, the Modified Agreement shall be a valid and binding obligation enforceable in accordance with its terms.

In witness whereof, the parties hereto have executed this Modified Operation and Maintenance Agreement on the date noted herein.

PIZZUTI PROPERTIES/MIRANOVA LIMITED:

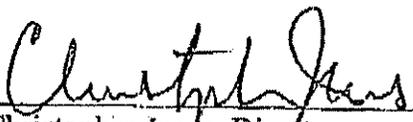
By: 

Date: 5-1-01

By: Richard C. Darden

Title: VP

OHIO ENVIRONMENTAL PROTECTION AGENCY:



Christopher Jones, Director
Ohio Environmental Protection Agency

Date: 5/8/00