



Environmental
Protection Agency

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

NOV 29 2012

CERTIFIED MAIL

Bonnie Rack
B.A.D. Properties LLC
1506 RiesenberG Lane
Cincinnati, OH 45215

AND

91 7199 9991 7030 4725 0345

Jeff Aluotto
Hamilton County - Assistant Administrator
138 East Court Street
Cincinnati, OH 45202

**RE: Issuance of Covenant Not To Sue for the Former Stearns & Foster
Property (12NFA466)**

Dear Ms. Rack and Mr. Aluotto:

I am pleased to inform you that on NOV 29 2012, the Director of the Ohio Environmental Protection Agency ("Director") issued a Covenant Not To Sue ("CNS") to B.A.D Properties LLC and Hamilton County for the Former Stearns & Foster property, located at 200 Shepherd Avenue, Lockland, Hamilton 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 NFA Letter, and subject to all conditions set forth in these Findings and Orders, Ohio EPA covenants not to sue and releases B.A.D. Properties LLC and Hamilton County, and their 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 covenant not to sue 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 B.A.D. Properties LLC to record the documents in the same manner as a deed for the property, as instructed by the CNS (see the "Conditions and Limitations" section). The enclosed Affidavit should

50 West Town Street, Suite 700
P.O. Box 1049
Columbus, OH 43216-1049

614 | 644 3020
614 | 644 3184 (fax)
www.epa.ohio.gov

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 to the attention of Angela Edwards, Records Management Officer, DERR, Ohio EPA Central Office, at the following address:

Ohio EPA – Division of Environmental Response & Revitalization
Assessment Cleanup & Reuse Section – Voluntary Action program
50 W. Town St., Suite 700
Columbus, OH 43215

Further, the Environmental Covenant - 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 date stamp. For questions on the recording of these documents, please contact the Ohio EPA Legal Office attorney designated below 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 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 thirty (30) days after notice of the Director's action. The appeal must be accompanied by a filing fee of \$70.00, made payable to "Treasurer, State of Ohio", 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 (3) 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 within the agency, Hamilton County, B.A.D. Properties LLC and Soil and Materials Engineers Inc, 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,

Handwritten signature of Tiffani Kavalec in cursive script.

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

Enclosure

cc: Keith Egan, Certified Professional, Soil and Materials Engineers, Inc.

ec: Martin Smith, DERR-SABR
Andrea Smoktonowicz, Legal Office
records@epa.state.oh.us