

Issuance Date: \_\_\_\_\_

Effective Date: \_\_\_\_\_

**BEFORE THE  
OHIO ENVIRONMENTAL PROTECTION AGENCY**

In the Matter Of:

Fram Property Site	:	<u>Director's Final Findings</u>
Geauga County	:	<u>and Orders</u>
7207 and 7209 Chagrin Road	:	
Bainbridge Township, Ohio	:	
	:	
	:	
Mr. Thomas Burns, General Partner,	:	
RTB Group,	:	
RTB Hemlock Limited Partnership, and	:	
RTB Industrial Limited Partnership	:	
	:	
	:	
Property Owners	:	

**I. JURISDICTION**

These Director's Final Findings and Orders ("Orders") are issued to Mr. Thomas Burns, General Partner, RTB Group, RTB Hemlock Limited Partnership, and RTB Industrial Limited Partnership ("Property Owners") pursuant to the authority vested in the Director of the Ohio Environmental Protection Agency ("Ohio EPA") under Ohio Revised Code ("ORC") Section 3734.02(G) and Ohio Administrative Code ("OAC") Rule 3745-27-03(B).

**II. PARTIES BOUND**

These Orders shall apply to and be binding upon the Property Owners and their successors in interest liable under Ohio law. No change in ownership of the Fram Property Site, as hereinafter described, shall in any way alter the Property Owners' responsibilities under these Orders.

**III. DEFINITIONS**

Unless otherwise stated, all terms used in these Orders shall have the same meaning as defined in ORC Chapter 3734. and the rules promulgated thereunder.

#### **IV. FINDINGS**

The Director of Ohio EPA ("Director") has determined the following findings:

1. ORC 3734.02(H) states, "No person shall engage in filling, grading, excavating, building, drilling, or mining on land where a hazardous waste facility, or solid waste facility, was operated without prior authorization from the director [of Ohio EPA], who shall establish the procedure for granting such authorization by rules adopted in accordance with Chapter 119. of the Revised Code."
2. OAC Rule 3745-27-13(A) states, "No person shall, without authorization from the director [of Ohio EPA], engage in filling, grading, excavating, building, drilling, or mining on land where a hazardous waste facility or solid waste facility was operated. Any person proposing to engage in these activities on land where a hazardous waste facility or solid waste facility was operated shall comply with the requirements of this rule."
3. The Property Owners are "persons" as that term is defined in ORC Section 3734.01(G) and in OAC Rule 3745-27-01(P)(3).
4. The Property Owners currently own the Fram Property Site, an approximately 4.3-acre property located north of Rocker Avenue between Chagrin Road and Franklin Road in Bainbridge Township, Geauga County, Ohio. The 4.3-acre Fram Property Site includes parcels identified as Geauga County Auditor Parcels Numbers 02-420106, 02-419836, 02-376800, and 02-420847.
5. On July 2, 2008, RP Consultants, Inc. (RP) submitted to Ohio EPA on behalf of the Property Owners a request pursuant to OAC Rule 3745-27-13(D)(2) to perform a subsurface investigation at the Fram Property Site. The original July 2, 2008, request is titled, *Fram Property Site, OAC 3745-27-13(F) Rule 13 Application, Multi-Tenant Buildings, 7207 and 7209 Chagrin Road, Bainbridge Township, Ohio*. Revisions to the original request, dated July 21, 2008, were received by Ohio EPA on July 21, 2008.
6. On July 22, 2008, Ohio EPA issued a letter concurring with the Property Owners request to conduct the subsurface investigation specified in the July 2, 2008, request, as revised through July 21, 2008, pursuant to OAC Rule 3745-27-13. The July 22, 2008, letter reminded the Property Owners of their certification report obligations pursuant to OAC Rule 3745-27-13(H)(10).
7. OAC Rule 3745-27-13(H)(10) requires that the owner or operator "shall provide a certification report within sixty days of completion of the filling, grading, excavating,

building, drilling, or mining activities.”

8. OAC Rule 3745-27-13(H)(10) further states, in part:

“This [certification] report shall contain the following:

- (a) A verification to Ohio EPA that the following activities have been completed:
  - (i) The owner or operator has filed with the board of health having jurisdiction and with Ohio EPA, a plat or revised existing plat for the unit(s) of the solid waste facility or hazardous waste facility and information describing the acreage, exact location, depth, volume, and nature of the waste deposited in the unit(s) of the solid waste facility or hazardous waste facility that was impacted by the filling, grading, excavating, building, drilling, or mining activities; and
  - (ii) If waste still remains on the property, the owner shall update any prior recorded notation on the deed to the property, in accordance with state law, to notify any potential purchaser of the property that the land has been used as a hazardous waste facility or solid waste facility and that its use is restricted. The notation shall describe the acreage impacted by the filling, grading, excavating, building, drilling, or mining activities; and the exact location, depth, volume, and nature of waste disposed of at the site.”

9. On November 7, 2008, RP submitted to Ohio EPA on behalf of the Property Owners a document titled, *Results of OAC 3745-27-13(F) Rule 13 Investigation, Fram Property Site, 7207 and 7209 Chagrin Road, Bainbridge Township, Geauga County*, documenting work completed in accordance with the July 2, 2008, request, as revised through July 21, 2008. Ohio EPA considers the document to be a certification report pursuant to OAC Rule 3745-27-13(H)(10). RP contends in the November 7, 2008, report that, based upon information obtained from the subsurface investigation, OAC Rule 3745-27-13 does not apply to future activities at the Fram Property Site.
10. The November 7, 2008, certification report did not contain an updated plat map or deed notation as required by rule. Furthermore, Ohio EPA advised RP that Ohio EPA could not agree with RP's conclusion that OAC Rule 3745-27-13 did not apply to the Fram Property Site.

11. On April 23, 2009, RP, on behalf of the Property Owners, submitted a request dated April 21, 2009, pursuant to ORC Section 3734.02(G) and OAC Rule 3745-27-03(B), for an exemption from the requirements to file an updated plat map or deed notation and provide verification of such filing as part of the certification report, as set forth in OAC Rules 3745-27-13(H)(10)(a)(i) and 3745-27-13(H)(10)(a)(ii).
12. Pursuant to ORC Section 3734.02(G) and OAC Rule 3745-27-03(B), the Director, by order, may exempt any person generating, collecting, storing, treating, disposing of, or transporting solid wastes in such quantities or under such circumstances that, in the determination of the Director, are unlikely to adversely affect the public health or safety or the environment from any requirement to obtain a permit or license or comply with other requirements of ORC Chapter 3734 and any rules adopted thereunder.
13. Pursuant to ORC Section 3734.02(G), issuance of an exemption relieving the Property Owners from the requirements to file an updated plat map and deed notation and provide verification of such filing for the Fram Property Site as part of the required certification report, pursuant to OAC Rules 3745-27-13(H)(10)(a)(i) and (ii), is unlikely to adversely affect the public health or safety or the environment.

#### **V. ORDERS**

1. Pursuant to ORC Section 3734.02(G) and OAC Rule 3745-27-03(B), the Property Owners are hereby exempted from the requirements of OAC Rules 3745-27-13(H)(10)(a)(i) and (ii) to file a plat revision and a deed notation and to provide verification of such filing as part of the certification report associated with the July 2, 2008, request, as revised through July 21, 2008, for the subsurface investigation at the Fram Property Site. The exemption granted herein for the Fram Property Site applies solely to the Property Owners and is not transferable to future owners of the property or for future certification reports required at this property or any other property.
2. Based upon the information provided in the certification report dated November 7, 2008, and the exemption request dated April 21, 2009, there is insufficient evidence for Ohio EPA to concur with RP's assertion that OAC Rule 3745-27-13 is not applicable to future site activities. These Orders shall not be interpreted as Ohio EPA providing concurrence with the November 7, 2008, certification report or any findings in the report.
3. These Orders shall not be construed to release the Property Owners from their responsibilities under ORC Chapter 3734 and OAC Chapter 3745-27 as an owner or operator of a property containing hazardous and/or solid waste.

## **VI. OTHER CLAIMS**

Nothing in these Orders shall constitute or be construed as a release from any claim, cause of action, or demand in law or equity against any person, firm, partnership, or corporation, not a party to these Orders, for any liability arising from, or related to, the Property Owners and/or related to the Fram Property Site as described herein.

## **VII. OTHER APPLICABLE LAWS**

All actions required to be taken pursuant to these Orders shall be undertaken in accordance with the requirements of all applicable local, state, and federal laws and regulations. These Orders do not waive or compromise the applicability and enforcement of any other statutes or regulations applicable to the Property Owners and/or the described Fram Property Site.

## **VIII. RESERVATION OF RIGHTS**

Nothing contained herein shall be construed to prevent Ohio EPA from seeking legal or equitable relief to enforce the terms of these Orders or from taking other administrative, legal, or equitable action as deemed appropriate and necessary for noncompliance with these Orders. Nothing contained herein shall be construed to prevent Ohio EPA from exercising its lawful authority to require the Property Owners to perform additional activities pursuant to ORC Chapter 3734 or any other applicable law in the future. Nothing herein shall restrict the right of the Property Owners to raise any administrative, legal, or equitable claim or defense with respect to such further actions which Ohio EPA may seek to require of the Property Owners. Nothing in these Orders shall be construed to limit the authority of Ohio EPA to seek relief for violations which may occur with respect to the Fram Property Site as described in these Orders.

**IT IS SO ORDERED:**

**Ohio Environmental Protection Agency**

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Chris Korleski  
Director