

**BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY**

In the Matter of	:	
	:	
THE DIAMOND SHAMROCK SITE	:	DIRECTOR'S FINAL
	:	FINDINGS AND ORDERS
Ace Lakefront Properties	:	
281 Corning Drive	:	
Bratenhal, OH 44108	:	
	:	
Scepter Management Corporation	:	
c/o Mr. Paul Brown, Agent	:	
2929 Allen Parkway, Suite 2170	:	
Houston, TX 77019	:	
	:	
Respondents.	:	

OHIO E.P.A.
JUN -5 96
FILED DIRECTOR'S JOURNAL

I. JURISDICTION

This Administrative Order constitutes Director's Final Findings and Orders and is issued pursuant to the authority vested in the Director of the Ohio Environmental Protection Agency (OEPA) by Ohio Revised Code (ORC) Sections 3704.05, 3734.13, 3734.20, and 6111.03.

II. PARTIES

These Orders shall apply to and be binding upon Ace Lakefront Properties, 281 Corning Drive, Bratenhal, OH 44108, and Scepter Management Corporation, c/o Mr. Paul Brown, Agent, 2929 Allen Parkway, Suite 2170, Houston, TX 77019, and their assigns and successors in interest.

III. STATEMENT OF PURPOSE

The objectives of OEPA are to: require the proper characterization of all waste on Site; to require the removal of all hazardous waste on the Site; to require the removal of

1 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: Mary Gavin Date 6-5-96

friable asbestos on the Site; and to prevent harm to human health and the environment.

IV. DEFINITIONS

The terms used in this Order, and the Workplans and any document required by this Order, shall have the same meaning as used in ORC Chapters 3734. and 6111. and as defined below:

- A. "Days" means calendar days, including weekends and holidays.
- B. "Hazardous substances" shall have the same meaning as defined in Section 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA) as amended, 42 USC Section 9601.
- C. "Hazardous waste" shall have the same meaning as defined at ORC Section 3734.01(J).
- D. "OEPA" means the Ohio Environmental Protection Agency and its designated representatives, including any contractor retained by OEPA, pursuant to this Order.
- E. "Party" or "Parties" means either Respondent and/or OEPA.
- F. "Respondent(s)" means Ace Lakefront Properties, Inc., its successors and assigns, and/or Scepter Management Corporation, its successors and assigns.
- G. "Site" means "facility," as defined in ORC 3734.01(N), which is located at the property located at Fairport Nursery Road, Parcel Number 12A-53-3, Part of Lot 2, Tract 3, as described more fully in the Quitclaim Deed attached to and fully incorporated within as Appendix A, where treatment, storage, placement or disposal of hazardous waste and/or industrial waste and/or other waste were conducted.

OHIO E.P.A.
JUN -5 96
ENTERED DIRECTOR'S JOURNAL

V. FINDINGS OF FACT, DETERMINATIONS AND CONCLUSIONS OF LAW

OEPA has determined that all findings of fact, determinations and/or conclusions 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: Mary Carvin Date 6-5-96

law necessary for the issuance of this Order pursuant to ORC Sections 3734.13, 3734.20 and 6111.03 have been made and are outlined below. OEPA has determined the following:

A. The Site constitutes the property located at Fairport Nursery Road, Parcel Number 12A-53-3, Part of Lot 2, Tract 3, and is currently listed by the Lake County Recorder as being owned by Ace Lakefront Properties.

B. The Site does not have a street address, because it is bordered by other properties on three sides and Lake Erie on the fourth. Access is gained to the Site by entering the access gate at Cousins, Inc., located at 1170 Fairport Nursery Road, Fairport, OH, then following unnamed access roads to an area bounded by an east-west access road, near an old rail line, on the south, a fence line on the west, the Chemical Land Holdings property on the east, and Lake Erie on the north.

C. Respondent Ace Lakefront Properties is the current owner of the parcel of land identified as the Site. Respondent Ace Lakefront Properties is a "person" as defined by ORC 3734.01(G).

D. Respondent Scepter Management, as successor to Erie Coke and Chemical, is the former owner and operator of the Site. Respondent Scepter Management disposed of iron oxide filings and stored coke tar decanter sludge (K087) on Site. Respondent Scepter Management is a "person" as defined in ORC Section 3734.01(G).

E. The Site was operated as a coke production facility since at least 1924 by the Diamond Shamrock Company. Upon Diamond Shamrock closing operations at the coke plant, Erie Coke and Chemical (nka Scepter Management) purchased the property and continued to operate the facility as a coke plant. During their operations on site, iron oxide metal filings and coke tar decanter sludge (K087) were created as waste products. Both the

OHIO E.P.A.
JUN -5 95
ENTERED DIRECTOR'S JOURNAL

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: Mary Gavin Date 6-5-96

iron oxide filings and K087 waste were stored on the property for greater than 180 days, resulting in a violation of hazardous waste laws. The company was notified in 1984 that the iron oxide filings were EP Toxic for chrome and that the coke tar decanter sludge was a listed hazardous waste. Wastewater from Erie Coke and Chemical contained ammonia, cyanide, phenols, oil and grease. Sludges from their wastewater treatment tested EP Toxic for chrome (7.5 mg/L) on 2/6/84.

F. Both the iron oxide filings and K087 wastes were illegally stored on Site when the coke plant was sold to a company known as National GG; National GG transferred the Site to Respondent Ace Lakefront Properties in July, 1993.

G. On 2/7/96, the Painesville Township Fire Department was called to put out a fire at a warehouse on the Site.

H. On 2/8/96, Teri Phillips, of the Ohio EPA, contacted Larry Thompson, Chief, Painesville Township Fire Department, regarding the 2/7/96 fire. Chief Thompson stated that an old warehouse on the Site had caught fire and that it was still burning. Chief Thompson expressed concern about asbestos possibly being released from the building. He stated that there was evidence of trespassers on site and that firemen found an "altar" set up in one of the buildings on site.

I. On 2/8/96, at 11:00 AM, Teri Phillips and Todd Fisher, DERR, Remedial Response Section, Ohio EPA, joined Chief Thompson for a site inspection. Chief Thompson stated that the call about the fire came into the fire station at about 10:00 PM on 2/7/96 and when the fire department arrived the building was engulfed in flames. He stated that gas cylinders which were located in the building exploded during the fire, posing a danger to his firefighters. The fire department had the warehouse razed and then drenched it with water.

OHIO E.P.A.
JUN -5 95
ENTERED DIRECTOR'S JOURNAL

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: Mary Carvin Date 6-5-96

Chief Thompson pointed out what appeared to be asbestos pipe covers sticking out of the ashes and debris of the demolished warehouse. Remnants of gas cylinders were also found scattered around the area.

J. During the visit a limited walk-through was performed on the site. It was noted that there were drums and various large and small storage tanks on the site, which were in various states of disrepair. Some of the drums appeared to be full of some type of liquid or solid. Ohio EPA personnel were unable to determine the contents of any of the drums or tanks. In addition, open trenches filled with unknown liquids were found within one of the buildings on site. Evidence of human trespass and/or occupation of the Site was observed, including the observation of a child's bookbag on the Site.

K. On 2/9/96, inspectors from the Ohio EPA contacted Mr. Dale Gndt, president of Ace Lakefront Properties, and conducted a PCB inspection. The following observations were among those made:

1. Approximately 6 drums were found on site, two of them containing unidentified material and/or liquid.
2. A large gas ball was found within 100 yards of the eroded bank of Lake Erie. This ball was used to store gasses derived from the coking process; this ball may still contain gasses or sludge, which could pose potential threat to the environment if released by trespassers.
3. One building on site contained large distillation vessels with insulated tanks. Immediately outside this building were two other large storage tanks. The contents of these tanks could not be easily determined. Erosion is currently threatening this building. The building is only 25' to 50' from the bank of Lake Erie.

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.

5

By: Mary Cavin Date 6-5-96

OHIO E.P.A.
JUN -5 96
ENTERED DIRECTOR'S JOURNAL

4. It appeared that the piping runs were covered with friable asbestos.
5. Several small above ground fuel tanks were found on site. The tanks were elevated and in various states of disrepair. A railroad tank car was noted on site.

L. On 3/4/96, after other attempts to gain access failed, the Ohio EPA obtained a search warrant from the Common Pleas Court of Lake County, Ohio. The search warrant was executed on 3/5/96, and an inspection was performed and samples of waste material and environmental media were obtained.

M. Analytical results from the samples taken indicate that friable asbestos is present on Site; the samples were analyzed as containing 25% and 30% chrysotile asbestos. The samples were taken from locations exposed to, and allowed to escape to, the open air and environment.

N. Sample results also indicate that hazardous constituents of K087 hazardous waste are present at various location on and around the Site, including 2-Methylnaphthalene (8,800,000 parts per billion), Fluoranthene (5800 parts per billion), Chrysene (5500 parts per billion), Naphthalene (2900 ppb), Phenanthrene (5100 ppb), Ideno (1,2,3-cd) pyrene (480 ppb).

O. A sample taken from waste contained in a drum in an unsecured building showed lead at a level (112 parts per million) which exceeded the level for hazardous waste as determined by the Toxic Characteristic Leaching Procedure (TCLP) (5 parts per million).

P. The sampling teams observed numerous examples of human occupation and/or trespass on the Site, including the placement of furniture in various locations, beer and soft drink containers disposed on the Site, and shoes and articles of clothing found on Site.

Numerous waste piles, containers and tanks, trenches and pits containing liquid were not

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: Mary Cavin Date 6-5-96

sampled, and in many instances are exposed to the environment. Odors emanated from the railroad tank car, but it was determined that it could not safely be sampled with the equipment and personnel available.

Q. The Site is a "Facility," as that term is defined in ORC Section 3734.01(N).

R. The discharge, deposit, injection, dumping, leaking, spilling or placing of industrial waste, hazardous waste, solid waste, other wastes, or pollutants onto or in ground or surface waters constitutes pollution of the "waters of the state," as that term is defined at ORC Section 6111.01(H).

S. Respondents are the persons who placed, caused to be placed, allowed to be placed, disposed of, allowed, or arranged for, the disposal of hazardous, solid, industrial, and/or other wastes, or pollutants at the Site in a manner which constitutes pollution of the "waters of the state."

T. The placement of industrial waste, hazardous waste, or other wastes from and at the Site constitutes a substantial threat to public health or safety or is causing or contributing to or threatening to cause or contribute to air or water pollution or soil contamination.

U. Friable asbestos allowed to escape to the open air and environment constitutes a nuisance in violation of Ohio Administrative Code section 3745-15-07.

V. The Director has given consideration to the evidence related to documented activities which have occurred and/or will occur at the Site. Based upon the facts as presented, the Director believes that issuance of this Order is furthering the intent of the General Assembly, that OEPA will prevent, control, or abate pollution of the environment for the protection and preservation of the health, safety, welfare, and property of the people of the state.

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: Mary Cavin Date 6-5-96

VI. ACCESS

- A. OEPA through its authorized representatives shall have authority to enter the Site pursuant to ORC sections 3734.20 and 6111.05.
- B. Nothing herein shall act to limit the statutory authority of OEPA to conduct inspections and gather information.

OHIO EPA

JUN -5 96

REGISTERED DIRECTOR'S JOURNAL

VII. ORDERS

- A. Within ninety (90) days of the effective date of these Orders, Respondents shall properly identify, remove, and dispose of all friable asbestos present on Site in accordance with Chapter 3745-20 of the Ohio Administrative Code.
- B. Within thirty (30) days of the effective date of these Orders, Respondents shall properly dispose of the drum, identified by markings as DS02 which contains hazardous waste (D008), in accordance with Chapter 3734. of the Ohio Revised Code and the rules promulgated thereunder.
- C. Within forty-five (45) days of the effective date of these Orders, Respondents shall evaluate all waste at the Site in accordance with Section 3745-52-11 of the Ohio Administrative Code, and shall provide to Ohio EPA the analytical results which demonstrates compliance with this paragraph.
- D. Within seventy-five (75) days of the effective date of these Orders, Respondents shall properly dispose of all waste identified as hazardous waste pursuant to Paragraph C. of this Section, in accordance with Chapter 3734. of the Ohio Revised Code and the rules promulgated thereunder.
- E. All work to be performed by Respondents pursuant to this Order shall be under the

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: Mary Gavin Date 6-5-96

direction and supervision of a qualified environmental engineer or other appropriate professional person with expertise in hazardous waste site management. Prior to the initiation of Site work, the Respondents shall notify OEPA in writing regarding the name, title, and qualifications of such engineer or other appropriate professional person and of any contractors and/or subcontractors to be used in carrying out the terms of this Order.

F. Respondents shall designate a Site Coordinator and an alternate for the purpose of overseeing the implementation of this Order, and shall notify OEPA of the names, addresses and telephone numbers of the Site Coordinator and alternate.

G. Any documents, reports, approvals or correspondence submitted pursuant to this Order shall be sent by certified mail return receipt requested (or the equivalent) to OEPA at the following addresses:

Ohio EPA
1800 WaterMark Drive
P. O. Box 1049
Columbus, Ohio 43266-0149
ATTN: DERR: Records Management Room

Ohio EPA
Northeast District Office, DERR
2110 E. Aurora Road
Twinsburg, Ohio 44087
Attn: Teri Phillips, Diamond Shamrock Site Coordinator

OHIO E.P.A.

JUN -5 96

LITTERED DIRECTOR'S JOURNAL

H. The Director's final findings and orders issued in the matter of the Diamond Shamrock Site which were journalized on May 7, 1996, are hereby superseded by these final findings and Orders.

VIII. RESERVATION OF RIGHTS

A. Nothing in these Orders shall prevent OEPA from requiring further action at the Site

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: Mary Gavin Date 6-5-96

necessary to protect human health or the environment or necessary to remediate or contain any contamination discovered, delineated, investigated or studied under or during the work required by these Orders. Nothing in these Orders shall prevent OEPA from requiring compliance with Chapters 3734., 3704. and 6111. of the Ohio Revised Code and the regulations promulgated thereunder, including the requirements for closure of hazardous waste facilities.

B. OEPA reserves the right to take any action pursuant to any available legal authority, including, but not limited to the right to seek injunctive relief, monetary penalties, recovery of oversight and response costs, natural resources damages, and punitive damages, as provided by law and/or for any violation of this Order or state, federal laws or regulations, or common law arising from or related to events or conditions at the Site.

C. In the event that Respondents decline or fail to perform the work, OEPA will have the right to undertake any interim action, remedial investigation, feasibility study work, and/or remedial action or removal action. In addition, OEPA will have the right to undertake removal actions and/or remedial actions in accordance with ORC Sections 3734.20 through 3734.26, or Section 107 of CERCLA, or any applicable law. In any event, OEPA reserves the right to seek reimbursement from Respondents thereafter for such costs incurred by the State of Ohio.

C. Nothing herein shall waive the right of OEPA to enforce this Order under any applicable legal authority.

D. Informal advice, guidance, suggestions, or comments by OEPA regarding reports, plans, specifications, schedules, or any other writings submitted by Respondents shall not

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: Mary Cavin Date 6-5-96

relieve Respondents of their obligation to obtain such formal approval as may be required by this Order.

IX. OTHER CLAIMS

Nothing herein is intended to release, discharge or in any way affect any claims, causes of action or demands in law or equity against any other person or entity, not a Respondent to this Order from any liability arising out of or relating in any way to the generation, storage, treatment, handling, transportation, release, or disposal of any hazardous wastes, hazardous substances, industrial wastes, other wastes, or pollutants at, to or from the Site.

X. NOTICE, LAND USE AND CONVEYANCE OF TITLE

Respondents shall assure that no portion of the Site will be used in any manner which would adversely affect the integrity of any containment systems, including Site Access restrictions, which may remain at the Site or monitoring systems installed pursuant to this Order. Respondents shall notify OEPA by registered mail at least ninety (90) days prior to any conveyance or an intent to convey any interest in land which is known to comprise the Site and of the provision made for continued maintenance of the system(s). Respondents shall provide any prospective buyer written notification, by registered mail, indicating the specific location of any containment systems, structures or monitoring systems located at the Site.

XI. OTHER APPLICABLE LAWS

Nothing herein shall be interpreted to relieve Respondents of any duty they have to insure that all actions required to be taken pursuant to this Order be undertaken in

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: Mary Gavin Date 6-5-96

OHIO E.P.A.
JUN -5 96
ENTERED DIRECTOR'S JOURNAL

accordance with the requirements of all applicable local, state, and federal laws and regulations including all environmental laws and regulations.

XII. EFFECTIVE DATE

A. The effective date of this Order shall be the date on which it is entered in the Journal of the Director of OEPA.

XIII. SEVERABILITY

A. In the event that any provision of this Order is invalidated by an order of the Environmental Board of Review or any court of law, all other portions of this Order shall remain valid and effective, and Respondents shall remain bound to comply with all portions not affected by such an order.

XIV. TERMINATION AND SATISFACTION

The provisions of this Order shall be terminated when Respondents demonstrate in writing and certifies to OEPA's satisfaction that all activities required under this Order have been completed and OEPA approves such certification in writing.

IT IS SO ORDERED:

By: Donald R. Schregardus / sig

6/7/96

Donald R. Schregardus, Director Date
Ohio Environmental Protection Agency

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: Mary Cavin Date 6-5-96

OHIO E.P.A.
JUN -5 96
ENTERED DIRECTOR'S JOURNAL

QUIT-CLAIM DEED

KNOW ALL MEN BY THESE PRESENTS, that

NATIONAL G.G. INDUSTRIES, INC.

a Corporation incorporated under the laws of the State of Ohio, the Grantor, who claims title by or through instrument, recorded in Volume 56, Pages 156, et seq., Lake County Recorder's Office, for the consideration of Ten Dollars (\$10.00), and other good and valuable consideration received to its full satisfaction of

ACE LAKEFRONT PROPERTIES, INC.

the Grantee, whose tax mailing address will be 15 East North St. Dover, Delaware 19901, has given, granted, remised, released, and forever quit-claimed, and does by these presents absolutely give, grant, remise, release and forever Quit-Claim unto the said Grantee, its successors and assigns forever, all such right and title as it, the said Grantor, has or ought to have in and to the following described piece or parcel of land, situated in the Township of Painesville, County of Lake, State of Ohio, and known as being a part of Lot 2, Tract 3 in said Township and is bounded and described as follows:

Beginning at a point at the intersection of the center-lines of East Street and Fairport Nursery Road;

Thence along the centerline of Fairport Nursery Road by the following courses and distances;

North 89 degrees - 46' East a distance of 299.99 feet to a point at a tangent intersection in said centerline;

North 49 degrees - 02' East a distance of 2094.60 feet to a point at a tangent intersection in said centerline;

North 76 degrees - 50' - 30" East a distance of 866.25 feet to a point at an angle in said centerline;

North 81 degrees - 44' - 30" East a distance of 594.16 feet to an iron pin in a monument box;

North 82 degrees - 44' - 30" East a distance of 388.80 feet to an iron pin in a monument box and North 81 degrees - 40' East a distance of 1206.66 feet to a point;

12A-53-3

Volume: 854 Page: 200

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: Mary Carwin Date 6-5-96

OHIO E.P.A.
JUN -5 96
ENTERED DIRECTOR'S OFFICE

This Conveyance has been examined and the Grantor has complied with Section 319.202 of the Revised Code.
#143 FEE \$ 10.00 10.00 X4
5-A AB EXEMPT
Edward M. Zupancic, County Auditor

Thence North 8 degrees - 20' - 00" West a distance of 266.54 feet to a point;

Thence North 26 degrees - 32' - 40" West a distance of 65.65 feet to an iron pipe stake;

Thence South 81 degrees - 24' - 30" West a distance of 131.61 feet to a point;

Thence North 8 degrees - 25' - 30" West a distance of 242.10 feet to a point;

Thence South 81 degrees - 43' - 30" West a distance of 150.70 feet to a point;

Thence North 8 degrees - 25' - 30" West a distance of 30.95 feet to an iron pin;

Thence North 8 degrees - 20' - 30" West a distance of 271.65 feet to a point and the principle place of beginning of the premises herein intended to be described;

Course I Thence South 81 degrees - 38' - 57" West a distance of 844.00 feet to an iron pin;

Course II Thence North 8 degrees - 21' - 03" West, a distance of 591.00 feet to a point at the waters edge of Lake Erie;

Course III Thence North 74 degrees - 55' - 24" East along the waters edge of Lake Erie a distance of 2431.62 feet to a point;

Course IV Thence South 8 degrees - 21' - 03" East a distance of 849.24 feet to an iron pin;

Course V Thence South 78 degrees - 56' - 18" West a distance of 665.72 feet to an iron pin;

Course VI Thence South 82 degrees - 35' - 27" West a distance of 300.00 feet to an iron pin;

Course VII Thence South 81 degrees - 38' - 57" West a distance of 605.94 feet to the principle place of beginning and containing 40.509 acres of land as surveyed by Lake, Inc., Engineers and Surveyors, to be the same or less but subject to all legal highways.

Together with all buildings and improvements thereon and appurtenances thereto.

To have and to hold the premises aforesaid, with the appurtenances thereunto belonging, to the said Grantee, its successors and assigns, so that neither the said Grantor, nor its successors or assigns, nor any other persons claiming title through or under it, shall or will hereafter claim or demand any right or title to the premises, or any part thereof; but they and every one of them shall by these presents be excluded and forever barred.

OHIO E.P.A.

JUN -5 96

ENTERED DIRECTOR'S JOURNAL

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 Mary Carwin Date 6-5-96

Volume: 854

Page: 201

IN WITNESS WHEREOF, said corporation, NATIONAL G.G. INDUSTRIES, INC., sets its hand and corporate seal to the foregoing Quit-Claim Deed consisting of three (3) typewritten pages, including this page:

NATIONAL G.G. INDUSTRIES, INC.

by Sara Wagner
its Director
and _____
its _____

this 18th day of May, 1993.

SIGNED IN THE PRESENCE OF:

[Signature]
[Signature]

930017843
PAGE 200
GEORGEY I. KEHT

RECEIVED FOR

STATE OF OHIO :
 : SS.
COUNTY OF CUYAHOGA :

RECORDER'S FEE \$ 1.00
LAKE COUNTY RECORDER
93 MAY 19
AT 842 CITY #11

BEFORE ME, a Notary Public in and for said County, personally appeared the above named NATIONAL G.G. INDUSTRIES, INC.,:

by Sara Wagner, its Director
and _____, its _____

who acknowledged that they did sign the foregoing instrument and that the same is the free act and deed of said corporation and the free act and deed of each of them personally and as such officers.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal at Cleveland, Ohio, this 18th day of May, 1993.

[Signature]
NOTARY PUBLIC

DOLORES KREEGER, NOTARY
State of Ohio
My Commission Expires Nov. 26, 1996



This instrument prepared by:

Leonard W. Yelsky
1050 Leader Building
Cleveland, Ohio 44114

TRANSFERRED
MAY 19 1993
Stanley N. Spornick
Auditor, Lake County, Ohio

OHIO E.P.A.
JUN -5 96
ENTERED DIRECTOR'S JOURNAL

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: Mary Cavin Date 6-5-96