

201407180456

To be recorded with Deed
Records - ORC § 317.08

**GSX Disposal, LLC, Train Avenue Property
ENVIRONMENTAL COVENANT**

This Environmental Covenant is entered into by GSX Disposal, LLC ("Owner") and the Ohio Environmental Protection Agency ("Ohio EPA") pursuant to Ohio Revised Code ("ORC") §§ 5301.80 to 5301.92 for the purpose of subjecting the Property described in Section 2 herein ("the Property"), to the activity and use limitations set forth herein.

Whereas, Owner is the owner of certain real property located at 2516 Train Avenue, Cleveland, Ohio, 44113 and legally described in Exhibit A attached hereto (collectively referred to herein as the "Property"); and

Whereas, Owner received a Hazardous Waste Installation and Operation Permit (Part A Permit) on February 5, 1982. Owner submitted a Part B Hazardous Waste Installation Operation Permit Application on November 2, 1982. However, after several revisions to the Part B Permit Application, Owner notified Ohio EPA on April 11, 1989 that the Owner will conduct closure and no longer pursue a Part B Hazardous Waste Installation and Operation Permit; and

Whereas, the Property was used for wastewater treatment, hazardous waste treatment, and hazardous waste storage between 1974 and 1988. Historical hazardous and non-hazardous waste management operations generally involved handling waste from off-site generators, storage in the E, N, or W Series Tanks, and filtration/sedimentation of metal constituents. Metal removal was accomplished through treatment with iron-containing pickle liquor, pH adjustment with lime, and gravity settling. The metal precipitate was dewatered using either a vacuum or pressure filter and a sand filter. The resulting water and the supernatant from the gravity settler was filtered through a sand filter and discharged to the sanitary sewer through the final discharge holding sump. Sludge was collected in sumps and roll-off boxes, and then disposed off-site. Process equipment included filters, pumps, tanks, and various storage and transportation areas used in support; and

Whereas, Owner submitted a closure plan to Ohio EPA on October 13, 1992 with revisions submitted on March 21, 1994. Ohio EPA approved the closure plan on September 28, 1994; and

Whereas, characteristic and listed hazardous wastes were treated and stored at the Property. The physical state of the wastes managed at the Property was liquid. Listed waste codes included several in the F, K, P, and U groups. Characteristic wastes from the D group included corrosives, ignitables, reactives, and EP-Toxic materials. There is no evidence that materials associated with all of the waste codes identified were actually accepted at the Property. Based upon a review of the materials potentially managed at the Property, it was determined that samples should be analyzed for

volatile organic compounds (VOCs), semi-volatile organic compounds (SVOCs), polychlorinated biphenyls (PCBs), formaldehyde, cyanide, and total metals; and

Whereas, any soil materials that are generated as a waste on the Property and destined for off-site disposal are considered to potentially contain a listed hazardous waste from past site operations and managed in accordance with the hazardous waste laws and rules; and

Whereas, Owner removed and decontaminated all process equipment from the hazardous and non-hazardous waste treatment and storage operations from the Property during the 1995 facility closure/decommissioning operations. Owner also removed all containers of waste and all pumpable waste from tanks, sumps and filters, as well as waste residues (unpumpable), tank and sump bottoms. Surfaces were cleaned and tested, and/or equipment was otherwise transferred or disposed. Closure activities also included the disposal or decontamination of sumps, concrete surfaces, pumps, piping, aboveground storage tanks, one underground storage tank, and the waste treatment systems. The only building left on the Property was decontaminated. Characterization of the Property was limited to surface soil sampling and analysis, as well as the borings installed to verify the presence of underground storage tanks. Therefore, further investigation was recommended for several areas; and

Whereas, Owner submitted a Phase II Site Investigation Workplan to Ohio EPA on June 10, 2005 to allow for better characterization of the surface and subsurface environment of the Property. Ohio EPA approved the Phase II Site Investigation Workplan on August 8, 2005 and the Workplan was implemented during 2005 and 2006. Owner submitted a Phase II Site Investigation Report on April 11, 2006 to document the investigation and propose additional site investigations. On September 11, 2006, Ohio EPA acknowledged the Phase II Site Investigation Report, but noted that further investigation of the soil and ground water contamination may be necessary. Two (2) groundwater monitoring events were completed in September 2008 and January 2009; and

Whereas, Owner submitted an Amended Closure Plan to Ohio EPA on January 4, 2007 addressing the additional surface and subsurface media, as well as the presence of hydrocarbon, polycyclic aromatic hydrocarbon and metal constituent contamination in background fill materials emplaced throughout the entire Train Avenue valley at the turn of the century. The Amended Closure Plan was subsequently approved by Ohio EPA on January 4, 2012; and

Whereas, Owner conducted additional soil, ground water, and soil gas investigations, demolished the building, and removed approximately 170 yd³ of contaminated material from the Property in 2012; and

Whereas, Owner submitted an Amended Closure Report to Ohio EPA on July 23, 2013 documenting that soil, groundwater, and soil gas investigations detected contamination above acceptable levels for an unrestricted use scenario. A site-specific risk assessment was conducted to demonstrate that any remaining constituents of concern in the surface and shallow soils and ground water were below Ohio EPA's risk goals for restricted use; and

Whereas, ground water is at an approximate depth of 8 feet below ground surface; and

Whereas, soil samples from 8-25 feet below ground surface had VOCs, SVOCs, and metal constituents at elevated concentrations and/or elevated detection limits throughout the Property. These constituents of concern were, in some cases, detected at concentrations greater than residential and industrial U.S. EPA Regional Screening Levels; and

Whereas, the following constituents of concern were identified in the on-site media: chlorinated and non-chlorinated solvents, polynuclear aromatic hydrocarbon compounds, and metals; and

Whereas, constituents in the vadose zone soils and ground water have the potential to partition to the gas phase and enter structures at concentrations unacceptable for human exposure; and

Whereas, the exposure assumptions, applicability of certain statistics and the behavior of vapors were called into question regarding the previous risk assessment conducted to determine the vapor intrusion risk. Therefore, given these concerns, the Owner proposed not to use the previous risk assessment, but instead assume the on-site indoor air vapor intrusion pathway is complete because of the concentrations of constituents found in on-site soils and ground water; and

Whereas, implementation of appropriate land and ground water use restrictions on the Property through an environmental covenant is therefore necessary to prevent access to or contact with contaminated soil and ground water, and to prevent unacceptable contact with vapors emanating from on-site media, in order to protect human health and the environment; and

Whereas, the Administrative Records of the Property are maintained as the file titled GSX Chemical Services – Train Avenue, (OHD 077 786 309) in the Ohio EPA, Northeast District Office, Division of Materials and Waste Management, 2110 East Aurora Road, Twinsburg, OH, 44087; and

Whereas, Owner is implementing the approved amended closure plan on the Property in accordance with Ohio EPA's hazardous waste requirements contained in ORC

Chapter 3734. As part of the closure, Owner has agreed to place certain restrictions on the future use of portions of the Property, as described herein.

Now therefore, Owner and Ohio EPA agree to the following:

1. Environmental Covenant. This instrument is an environmental covenant developed and executed pursuant to ORC §§ 5301.80 to 5301.92.
2. Property. This Environmental Covenant concerns an approximately one acre tract of real property owned by Owner located at 2516 Train Avenue, Cleveland, Ohio, 44113 in Cuyahoga County and more particularly described in Exhibit A attached hereto and hereby incorporated by reference herein ("Property").
3. Owner. This Property is owned by GSX Disposal, LLC ("Owner") who has a place of business at Clean Harbors Environmental Services, Inc., 42 Longwater Drive, Norwell, Massachusetts.
4. Holder. Pursuant to ORC § 5301.81, the holder of this Environmental Covenant is the Owner listed above.
5. Activity and Use Limitations. As part of the Amended Closure Plan on the Property, Owner hereby imposes and agrees to comply with the following activity and use limitations:
 - A. The Property shall not be used for residential but may be used for industrial activities. The term "residential activities" shall include, but not be limited to, the following:
 - (i) Single and multi-family dwelling and rental units;
 - (ii) Day care centers, preschools and (K-12) educational facilities;
 - (iii) Correctional facilities;
 - (iv) Transient or other residential facilities; and
 - (v) Production of food-chain products by agricultural means for animal or human consumption.
 - B. Ground water located within or upon the Property shall not be used except for investigation, monitoring or remediation purposes.
 - C. Excavation of all or any portion of the Property below eight feet shall be prohibited except in conjunction with a health and safety plan that provides notice to construction and maintenance workers and describes health and safety protection measures.

- D. No structure shall be constructed for human occupancy without a vapor barrier and/or satisfactory engineered ventilation system with ongoing operation and maintenance and annual indoor air monitoring, and/or empirical data to support that an unacceptable risk is not present and that ongoing monitoring is not required.

If any event or action by or on behalf of a person who owns an interest or holds an encumbrance on the Property, identified in paragraph 11 below, constitutes a breach of the activity and use limitations, Owner or Transferee shall notify Ohio EPA within thirty (30) days of becoming aware of the event or action, and shall remedy the breach of the activity and use limitations within sixty (60) days of becoming aware of the event or action, or such other time frame as may be agreed to by the Owner or Transferee and Ohio EPA.

6. Running with the Land. This Environmental Covenant shall be binding upon the Owner during the time that the Owner owns the Property or any portion thereof, and upon all assigns and successors in interest, including any Transferee, and shall run with the land, pursuant to ORC § 5301.85, subject to amendment or termination as set forth herein. The term "Transferee," as used in this Environmental Covenant, shall mean any future owner of any interest in the Property or any portion thereof, including, but not limited to, owners of an interest in fee simple, mortgagees, easement holders, and/or lessees.
7. Compliance Enforcement. Compliance with this Environmental Covenant may be enforced pursuant to ORC § 5301.91. Failure to timely enforce compliance with this Environmental Covenant or the activity and use limitations contained herein by any party shall not bar subsequent enforcement by such party and shall not be deemed a waiver of the party's right to take action to enforce compliance. Nothing in this Environmental Covenant shall restrict the Director of Ohio EPA from exercising any authority under applicable law.
8. Rights of Access. Owner hereby grants to Ohio EPA's authorized representatives the right of access to the Property for implementation or enforcement of this Environmental Covenant and shall require such access as a condition of any transfer of the Property or any portion thereof.
9. Compliance Reporting. Owner or any Transferee shall submit to Ohio EPA and Holder(s) other than Owner on an annual basis a written documentation verifying that the activity and use limitations remain in place and are being complied with.
10. Notice upon Conveyance. Each instrument hereafter conveying any interest in the Property or any portion of the Property shall contain a notice of the activity

and use limitations set forth in this Environmental Covenant, and provide the recorded location of this Environmental Covenant. The notice shall be substantially in the following form:

THE INTEREST CONVEYED HEREBY IS SUBJECT TO AN ENVIRONMENTAL COVENANT, DATED __, 2014, RECORDED IN THE DEED OR OFFICIAL RECORDS OF THE CUYAHOGA COUNTY RECORDER ON _____, 201_, IN [DOCUMENT _____, or BOOK____, PAGE ____]. THE ENVIRONMENTAL COVENANT CONTAINS THE FOLLOWING ACTIVITY AND USE LIMITATIONS:

The Property shall not be used for residential activities but may be used for industrial activities. The term "residential activities" shall include, but not be limited to, the following:

- (i) Single and multi-family dwelling and rental units;
- (ii) Day care centers, preschools and (K-12) educational facilities;
- (iii) Correctional facilities;
- (iv) Transient or other residential facilities; and
- (v) Production of food-chain products by agricultural means for animal or human consumption.

Ground water located within or upon the Property shall not be used except for investigation, monitoring or remediation purposes.

Excavation of all or any portion of the Property below eight feet shall be prohibited except in conjunction with a health and safety plan that provides notice to construction and maintenance workers and describes health and safety protection measures.

No structure shall be constructed for human occupancy without a vapor barrier and/or satisfactory engineered ventilation system with ongoing operation and maintenance and annual indoor air monitoring, and/or empirical data to support that an unacceptable risk is not present and that ongoing monitoring is not required.

Owner or Transferee, if applicable, shall notify Ohio EPA within ten (10) days after each conveyance of an interest in the Property or any portion thereof. The notice shall include the name, address, and telephone number of the Transferee, a copy of the deed or other documentation evidencing the conveyance, and a survey map that shows the boundaries of the Property being transferred.

11. Representations and Warranties. Owner hereby represents and warrants to the other signatories hereto:
- A. that the Owner is the sole owner of the Property;
 - B. that the Owner holds fee simple title to the Property and that the Owner conducted a current title search that shows the Property is not subject to any interests or encumbrances that conflict with the activity and use limitations set forth in this Environmental Covenant;
 - C. that the Owner has the power and authority to enter into this Environmental Covenant, to grant the rights and interests herein provided and to carry out all obligations hereunder;
 - D. that this Environmental Covenant will not materially violate or contravene or constitute a material default under any other agreement, document or instrument to which Owner is a party or by which Owner is a party or by which Owner may be bound or affected;
 - E. that the Owner has identified all other persons that own an interest in or hold an encumbrance on the Property and, if applicable, notified such persons of the Owner's intention to enter into this Environmental Covenant.
12. Amendment or Termination. This Environmental Covenant may be amended or terminated by consent of all of the following: the Owner or a Transferee, if applicable; and the Director of the Ohio EPA, pursuant to ORC § 5308.82 and 5301.90 and other applicable law. The term "Amendment," as used in this Environmental Covenant, shall mean any changes to the Environmental Covenant, including the activity and use limitations set forth herein, or the elimination of one or more activity and use limitations when there is at least one limitation remaining. The term "Termination," as used in this Environmental Covenant, shall mean the elimination of all activity and use limitations set forth herein and all other obligations under this Environmental Covenant.

This Environmental Covenant may be amended or terminated only by a written instrument duly executed by the Director of Ohio EPA and the Owner or Transferee and other Holder of the Property or portion thereof, as applicable. Within thirty (30) days of signature by all requisite parties on any amendment or termination of this Environmental Covenant, the Owner or Transferee shall file such instrument for recording with the Cuyahoga County Recorder's Office, and shall provide a file- and date-stamped copy of the recorded instrument to Ohio EPA and other Holders or their assignees, if any.

13. Severability. If any provision of this Environmental Covenant is found to be unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired.
14. Governing Law. This Environmental Covenant shall be governed by and interpreted in accordance with the laws of the State of Ohio.
15. Recordation. Within thirty (30) days after the date of the final required signature upon this Environmental Covenant, Owner shall file this Environmental Covenant for recording, in the same manner as a deed to the Property, with the County Recorder's Office. Owner shall certify to Ohio EPA that the Environmental Covenant has been filed for recording, and include with the certification a file and date-stamped copy of the Environmental Covenant.
16. Effective Date. The effective date of this Environmental Covenant shall be the date upon which the fully executed Environmental Covenant has been recorded as a deed record for the Property with the Cuyahoga County Recorder.
17. Distribution of Environmental Covenant. The Owner shall distribute a file- and date-stamped copy of the recorded Environmental Covenant to: Ohio EPA, any other signatories to the Environmental Covenant, and each unit of local government in which the Property is located.
18. Notice. Unless otherwise notified in writing by or on behalf of the current owner or Ohio EPA, any document or communication required by this Environmental Covenant shall be submitted to:

As to Ohio EPA:

Ohio Environmental Protection Agency
Lazarus Government Center
Division of Environmental Response and Revitalization
P.O. Box 1049
Columbus, Ohio 43216-1049
Attn: DERR Records Management Officer

And

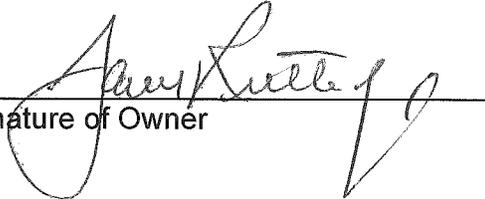
Ohio Environmental Protection Agency
Northeast District Office
Division of Environmental Response and Revitalization
2110 East Aurora Road
Twinsburg, OH, 44087
Attn: DERR Site Coordinator for GSX Disposal, LLC

As to Owner:
GSX Disposal, LLC
Attn: General Counsel
42 Longwater Drive
Norwell, Massachusetts 02061

The undersigned represents and certifies that the undersigned is authorized to execute this Environmental Covenant.

IT IS SO AGREED:

GSX Disposal, LLC


Signature of Owner

James Rutledge, Executive Vice President
Printed Name and Title

June 23, 2014
Date

State of Massachusetts)
County of Plymouth)

ss:

Before me, a notary public, in and for said county and state, personally appeared, a duly authorized representative of [Owner], who acknowledged to me that [he/she] did execute the foregoing instrument on behalf of [Owner].

IN TESTIMONY WHEREOF, I have subscribed my name and affixed my official seal this day of June, 2014.


Notary Public



COLEEN O'DONNELL ROBBIE
Notary Public
Commonwealth of Massachusetts
My Commission Expires
April 17, 2020

OHIO ENVIRONMENTAL PROTECTION AGENCY

Craig W. Butler
Craig W. Butler, Director

7/7/14
Date

State of Ohio)
)
County of Franklin) ss:

Before me, a notary public, in and for said county and state, personally appeared Craig W. Butler, the Director of Ohio EPA, who acknowledged to me that he did execute the foregoing instrument on behalf of Ohio EPA.

IN TESTIMONY WHEREOF, I have subscribed my name and affixed my official seal this day of July, 2014.



TH
Charma Diane Casteel
Notary Public

CHARMA DIANE CASTEEL
NOTARY PUBLIC
STATE OF OHIO
MY COMMISSION EXPIRES

May 10, 2019

This instrument prepared by:

Elissa Miller
Ohio Environmental Protection Agency
50 West Town Street, Suite 700
Columbus, Ohio 43216

Exhibit "A"

CUYAHOGA COUNTY RECORDER
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Situated in the City of Cleveland, County of Cuyahoga and State of Ohio:

And known as being part of Sublot No. 82 in the Morison Allotment of part of Original Brooklyn Township Lot No. 69, as shown by the recorded plat in Volume 9 of Maps, Page 6 of Cuyahoga County Records, and part of Sublot Nos. 15, 16 and 17 in the Sargent and Dixon Subdivision of part of Original Barber and Lord's Subdivision of part of Original Brooklyn Township Lot Nos. 51, 52, 69 and 70, as shown by the recorded plat in Volume 3 of Maps, Page 22 of Cuyahoga County Records, and part of Sublot Nos. 398 and 399 in Barber and Lord's Subdivision of part of Original Brooklyn Township Lot Nos. 51, 52, 69 and 70, as shown by the recorded plat in Volume 11 of Maps, Pages 26 and 27 of Cuyahoga County Records, and a part of former Walworth Avenue S.W., which was vacated by Ordinance No. 84796, passed October 8, 1928 by the Council of the City of Cleveland, and together forming a parcel more particularly bounded and described as follows:

Beginning in the intersection of the westerly line of West 25th Street, 66 feet wide, and the northwesterly line of Train Avenue S.W., 60 feet wide, now known as Train Avenue;

Thence South $57^{\circ} 20' 30''$ West, along said northwesterly line of Train Avenue S.W., a distance of 451.53 feet to a point of curve;

Thence along the northwesterly line of Train Avenue S.W., as appears by said plat, recorded in Volume 117 of Maps, Page 30 of Cuyahoga County Records, and being along the arc of a curve deflecting to the left, a distance of 14.97 feet to a point at the southwesterly end of that certain parcel of land which was conveyed as parcel B to The Cleveland, Cincinnati, Chicago and St. Louis Railway Company by deed dated September 23, 1943 and recorded in Volume 5649, Page 408 of Cuyahoga County Records, said arc having a radius of 310 feet and a chord which bears South $55^{\circ} 57' 30''$ West, 14.97 feet to said point in the land conveyed as aforesaid;

Thence Southwesterly along the northwesterly line of Train Avenue S.W., and being along a curve to the left, an arc distance of 75.48 feet to a point marked by an iron pin, said curve having a radius of 310 feet and a chord which bears South $47^{\circ} 37' 25''$ West, a distance of 75.29 feet to said point;

Thence Northeasterly along a curve to the right an arc distance of 87.71 feet to a point of compound curvature marked by an iron pin, said curve having a radius of 6612.44 feet and a chord which bears North $35^{\circ} 47' 25''$ East, a distance of 87.71 feet to said point;

Thence continuing Northeasterly along a curve to the right of an arc distance of 74.70 feet to a point of compound curvature marked by an iron pin, said curve having a radius of 1,030.31 feet and a chord which bears North $38^{\circ} 14' 50''$ East, a distance of 74.68 feet to said point;

Thence continuing Northeasterly along a curve to the right, an arc distance of 82.21 feet to a point of compound curvature marked by an iron pin having a radius of 2112.89 feet and a chord which bears North $41^{\circ} 26' 20''$ East, a distance of 82.21 feet to said point;

Thence continuing Northeasterly along a curve to the right, an arc distance of 99.31 feet to a point of compound curvature marked by an iron pin, said curve having a radius of 1,110.65 feet and a chord which bears North $45^{\circ} 06' 55''$ East, a distance of 99.28 feet to said point;

Thence continuing Northeasterly along a curve to the right an arc distance of 99.31 feet to a point of compound curvature marked by an iron pin, said curve having a radius of 1,933.22 feet and a chord which bears North $49^{\circ} 08' 55''$ East, a distance of 99.30 feet to said point;

Thence continuing Northeasterly along a curve to the right an arc distance of 79.91 feet to a point of compound curvature marked by an iron pin, said curve having radius of 1,293.41 feet and a chord which bears North $52^{\circ} 23' 25''$ East, a distance of 79.90 feet to said point;

Thence continuing Northeasterly along a curve to the right an arc distance of 59.89 feet to a point marked by an iron pin in said westerly line of West 25th Street, said curve having a radius of 1,479.17 feet and a chord which bears North $55^{\circ} 19' 13''$ East, a distance of 59.89 feet to said point;

Thence South 19° 45' 15" East, along said westerly line of West 25th Street a distance of 113.16 feet to the Place of Beginning, as appears by said plat, be the same more or less but subject to all legal highways.
Permanent Parcel Number 007-13-001, 002

ROBERT KLAIBER P. E., P. S.
Legal Description complies with
Cuyahoga County Conveyance
Standards and is approved for
transfer:

OCT 08 2002



Agent