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Tampa, Florida 33602
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November 1, 2023

VIA EMAIL

Zane Nestor
Krista Nestor
5602 Thonotosassa Road
Plant City, Florida 33565

Re: State of Florida Drycleaning Solvent Cleanup Program Eligibility for the
Plant City Laundry & Cleaners Facility located at
401 East Reynolds Street, Plant City, Florida 33566
FDEP Facility ID #299501205; ERIC 4722

Dear Zane and Krista Nestor:

We are pleased to have the opportunity to provide additional information to you in connection with drycleaning solvent contamination environmental matters at the Plant City Laundry & Cleaners facility located at 401 East Reynolds Street, Plant City, Florida 33566. The purpose of this correspondence is to provide additional information to you regarding the history and current status of the State of Florida Drycleaning Solvent Cleanup Program (the "Program"), specifically regarding environmental liability issues and confirmation that the drycleaning solvent contamination identified at this property has been granted eligibility by the Florida Department of Environmental Protection to participate in the Program.

In 1994, the Florida Legislature created the Drycleaning Solvent Cleanup Program to establish a state-funded program for the restoration of sites which have been contaminated by releases of drycleaning solvents from eligible drycleaning facilities. The Program was established in response to a legislative finding, set forth in Section 376.3078, Florida Statutes (the "Act"), that "Discharges of drycleaning solvents at such drycleaning facilities have occurred and are occurring, and pose a significant threat to the quality of the groundwater and inland surface waters of this state." Since 1994, the Program has been funded annually by the Florida Legislature with appropriations from the Water Quality Assurance Trust Fund. The Florida Legislature has further expressed its commitment to the Program, as set forth in the Act, as follows:

"Adequate financial resources must be regularly available to provide for the expeditious supply of safe and reliable alternative sources of

potable water to affected persons and to provide a means for investigation and rehabilitation of contaminated sites without delay."

Pursuant to Chapter 376, Florida Statutes, the Program is funded from the Water Quality Assurance Trust Fund. This Legislation establishes several revenue funding sources for the Program which include a gross receipts tax on each drycleaning facility, a tax of \$5 per gallon on the sale or importation by a Florida drycleaning facility of perchloroethylene, registration and renewal fees, and deductibles which are paid by Program participants.

The former drycleaning facility at located at 401 East Reynolds Street, Plant City, Florida 33566 (FDEP Facility ID #299501205) has been granted eligibility by the Florida Department of Environmental Protection ("Department") for participation in the Program. Specifically, the Department issued an eligibility Order dated January 11, 1999 to Plant City Laundry and Cleaners which documents and constitutes the Department's Final Order of approval for this property to participate in the Program. A \$5,000.00 Program deductible has already been paid. Based on information available regarding the historical operation of the drycleaning facility at this property, drycleaning solvents were identified in soil and/or groundwater at the property in excess of the Cleanup Target Levels established and administered by the Department.

After the Department determines that a facility is eligible for participation in the Program, the site is evaluated and assigned a priority ranking score which is used to determine its rank on the Department's Priority List for purposes of funding site rehabilitation. The criteria for scoring a site with documented drycleaning contamination eligible to participate under the Program are established by statute, and therefore, any changes to the scoring system would require legislative action. The factors considered by the Department in providing a score for a particular drycleaning facility include threats to drinking water supply wells, aquifer classification, degree of contamination of soil or groundwater at the site and the applicable environmental setting. The Department has originally assigned this facility a priority ranking score of 99 points. Based upon this priority ranking score, the drycleaning solvent contamination at this facility has been granted a commitment of restoration funding from the Department for the implementation of site rehabilitation activities. Based upon a priority ranking score of 99 points, the Department will commit restoration funding for the drycleaning solvent contamination at this property which has been granted eligibility under the Program.

As regards liability considerations for owners and operators of drycleaning facilities, as well as other interested parties, the Act provides in Section 376.3078(3)(a), Florida Statutes, that for facilities which have been granted eligibility under the Program:

(3) REHABILITATION LIABILITY

- (a) In accordance with the eligibility provisions of this section, a real property owner, nearby real property owner, or person who owns or operations, or who otherwise could be liable as a result of the operation of, a drycleaning facility or a wholesale supply facility is not liable for or subject to:
1. Claims of any person, except for any governmental entity, for property damage of any kind, including, but not limited to, diminished value or real property or improvements;

lost or delayed rent, sale, or use of real property or improvements; or stigma to real property or improvements caused by drycleaning-solvent contamination; or

2. Administrative or judicial action brought by or on behalf of any state or local government or agency thereof or by or on behalf of any person to compel rehabilitation or pay for the costs of rehabilitation of environmental contamination resulting from the discharge of drycleaning solvents.

Subject to the delays that may occur as a result of the prioritization of sites under this section for any qualified site, costs for activities described in paragraph (2)(b) shall be absorbed at the expenses of the drycleaning facility restoration funds, without recourse to reimbursement or recovery from the real property owner, nearby real property owner, or the owner or operator of the drycleaning facility or the wholesale supply facility. Notwithstanding any other provision of this chapter, this subsection applies to causes of action accruing on or after the effective date of this act and applies retroactively to causes of action accruing before the effective date of this act for which a lawsuit has not been filed before the effective date of this act.

The Act does not provide a direct lender liability exemption per se, however, many lenders have taken "comfort" in the rehabilitation liability provision set forth above which provides protection to persons "who otherwise could be liable as a result of the operation of a drycleaning facility." We are not aware of any cases in Florida where the Department has prevailed in litigation on an eligible drycleaning facility against a lender which simply holds an indicia of ownership in the property primarily to protect its security interest, so long as the lender has not divested the borrower of, or otherwise engaged in, decision-making control over site operations, particularly with respect to the storage, use or disposal of drycleaning solvents. In addition, the 2003 Florida Legislature further amended the Act to strengthen the liability defense provisions set forth above as follows:

(f) Strong public interests are served by subsections (3) and (11). These include improving the marketability and use of, and the ability to borrow funds as to, property contaminated by drycleaning solvents and encouraging the voluntary remediation of contaminated sites. The extent to which claims or rights are affected by subsections (3) and (11) is offset by the remedies created in this section. The limitations imposed by these subsections on such claims or rights are reasonable when balanced against the public interests served. The claims or rights affected by subsections (3) and (11) are speculative, and these subsections are intended to prevent judicial interpretations allowing windfall awards that thwart the public-interest provisions of this section

The Act further provides that the costs incurred for site assessment and rehabilitation shall be absorbed at the expense of the drycleaning facility restoration funds, "without recourse to reimbursement or recovery from the real property owner or the owner or operator of the drycleaning facility or the wholesale supply facility." In addition, the Act provides that the determination of Program eligibility for a particular facility is not adversely affected by a future conveyance of the drycleaning facility or the real property upon which the drycleaning facility is located.

In addition to the liability protection provisions set forth above, buyers may have concerns regarding the property because drycleaning solvent contamination may migrate from this property to

adjacent property owned by others. In response to this concern, the Florida Legislature enacted the following liability protection provision in the Act as follows:

A person whose property becomes contaminated due to geophysical or hydrologic reasons from the operation of a nearby drycleaning or wholesale supply facility and whose property has never been occupied by a business that utilized or stored drycleaning solvents or similar constituents is not subject to administrative or judicial action brought by or on behalf of another to compel the rehabilitation of or the payment of the costs for the rehabilitation of sites contaminated by drycleaning solvents, provided that the person:

1. Does not own and has never held an ownership interest in, or shared in the profits of, the drycleaning facility operated at the source location;
2. Did not participate in the operation or management of the drycleaning facility at the source location; and
3. Did not cause, contribute to, or exacerbate the release or threat of release of any hazardous substance through any act or omission.

Parties such as frequently contact the Florida Department of Environmental Protection or other governmental agencies to obtain a certain level of "comfort" prior to proceeding with a real estate or financing transaction. We have contacted the Department on numerous occasions to obtain similar confirmation and/or comfort letters. Although I cannot provide copies of any specific correspondence because of the confidential nature of these transactions, I would like to share with you an excerpt from historical correspondence we received from the Department:

If the groundwater contamination that may exist below your site has moved below the site from a source of contamination located off the property, neither the owner nor a lender that holds a security interest in your property would have any liability. Second, under both state and federal law, there is no lender liability for a lender that maintains a security interest in a contaminated piece of property and exercises no management role in the operation of a site. Under federal law, the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. Section 9601 (20)(a), a lender that maintains an indicia of ownership in a facility or site primarily to protect a security interest without participating in the facility's management has no liability. Participating in the facility's management is defined as exercising decision-making control over this secured facility's hazardous substance handling or disposal practices or functioning as a facility manager by exercising overall decision-making control. Finally, Section 403.727(5), Florida Statutes, provides a defense to liability for a lender or any other party that can demonstrate that the contamination was solely the result of an act or omission of a third party. As the result of the above-described state and federal law, it has been the Department's practice to only pursue a lender

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concerning a contaminated site if there are clear facts to indicate that a lender is participating in the facility's management as described above.

I trust the statements set forth above which were provided by the Florida Department of Environmental Protection provide further assurances and a certain level of comfort to you regarding the drycleaning solvent contamination at the property. The information set forth above provides our current understanding of the Program and the current administration of the Program by the Florida Department of Environmental Protection. Nothing set forth in this correspondence should be construed as a formal legal opinion from Buchanan Ingersoll & Rooney. The information and statements contained in this correspondence are based upon Florida law as currently in effect. We assume no obligation to advise you of any changes in the foregoing legislation or the Program subsequent to the delivery of this correspondence.

This correspondence has been prepared solely for your use and may not be relied upon by any other person, entity or governmental agency, nor quoted or otherwise referred to for any other purpose without our prior written consent. I trust the information set forth above is fully responsive to the questions and concerns raised regarding environmental matters at the Plant City property. As always, please do not hesitate to contact me should you have any questions or concerns regarding the above matters or if you require any additional information.

Sincerely yours,

BUCHANAN INGERSOLL & ROONEY PC



Ron H. Noble

cc: Don Stine

4894-6572-5574, v. 1



Department of Environmental Protection

Lawton Chiles
Governor

Twin Towers Office Building
2600 Blair Stone Road
Tallahassee, Florida 32399-2400

Virginia B. Wetherell
Secretary

January 11, 1999

**CERTIFIED MAIL
RETURN RECEIPT REQUESTED**

Mr. J. P. Leitner, Jr.
Plant City Laundry & Cleaners
P.O. Box 1180
Plant City, Florida 33566

RMC **QA'ed**
Initials _____ Date _____

**Subject: Plant City Laundry & Cleaners
401 East Reynolds Street
Plant City, Florida 33566
DEP Facility ID 299501205**

Dear Mr. Leitner:

The Department has completed its review of the application package submitted in accordance with Chapter 62-781, Florida Administrative Code (F.A.C.). The Department has determined that the referenced site is eligible for state-administered cleanup under the Drycleaning Solvent Cleanup Program.

Pursuant to Section 376.3078(5), Florida Statutes (F.S.), the site has received a score of **93**. A priority list of eligible sites will be maintained by the Department, based on an ordering of scored sites such that the highest scored sites are of the highest priority for rehabilitation. Scored sites are incorporated into this list on a quarterly basis with all sites previously on the list being adjusted accordingly.

Section 376.3078, F.S., provides that cleanup of this incident be absorbed at the expense of the Hazardous Waste Management Trust Fund, minus a deductible payable by the applicant(s). The deductible for this facility, pursuant to 376.3078(3)(d), is **\$5,000** and will be payable upon notice from the Department. Also, participation in the Program is contingent upon continual compliance with the conditions of eligibility set forth in Section 376.3078(3), F.S.

Persons whose substantial interests are affected by this Order of Eligibility have a right, pursuant to Sections 120.569 and 120.57, F.S., to petition for an administrative determination (hearing). The Petition must conform to the requirements of Chapters 62-110.106 and 28-106.201, F.A.C., and must be filed (received) with the Department's Office of General Counsel, 3900

"Protect, Conserve and Manage Florida's Environment and Natural Resources"

Mr. J. P. Leitner, Jr.
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Commonwealth Boulevard, Tallahassee, Florida 32399-3000, within twenty-one (21) calendar days of receipt of this Notice. Failure to file a petition within the twenty-one (21) calendar days constitutes a waiver of any right such persons have to an administrative determination (hearing) pursuant to Sections 120.569 and, 120.57, F.S.

The petition shall contain the following information: (a) The name, address, and telephone number of each petitioner, the applicant's name and address, the Department's Facility Identification Number and county in which the project is proposed; (b) A statement of how and when each petitioner received notice of the Department's action or proposed action; (c) A statement of how each petitioner's substantial interests are affected by the Department's action or proposed action; (d) A statement of the material facts disputed by petitioner if any; (e) A statement of how each petitioners contends warrant reversal or modification of the Department's action or proposed action; (f) A statement of which rules or statutes petitioner contends warrant reversal or modification of the Department's action or proposed action; and (g) A statement of the relief sought by petitioner, stating precisely the action petitioner wants the Department to take with respect to the Department's action or proposed action.

If a petition is filed, the administrative hearing process is designed to formulate agency action. Accordingly, the Department's final action may be different from the position taken by it in this Notice. Persons whose substantial interests will be affected by any decision of the department with regard to the application have the right to petition to become a party to the proceeding. The petition must conform to the requirements specified above, as set forth in Chapters 62-110.106 and 28-106.201, F.A.C., and must be filed (received) with the Department's Office of General Counsel, 3900 Commonwealth Boulevard, Tallahassee, Florida 32399-3000, within twenty-one (21) calendar days of receipt of this Notice. Failure to petition within the allowed time frame constitutes a waiver of any right such person has to request a hearing under Sections 120.569 and 120.5, F.S., and to participate as a party to this proceeding. Any subsequent intervention will only be at the approval of the presiding officer upon motion filed pursuant to rule 22I-6, F.A.C.

This Order of Eligibility is final and effective on the date on the top of the first page of this Order unless a petition is filed in accordance with the preceding paragraph. Upon the timely filing of such petition, this Order will not be effective until further order of the Department. Please be advised that mediation of administrative disputes arising from or relating to this Order of Eligibility is not available (Section 120.573, F.S.); when requested the Department will continue to

Mr. J. P. Leitner,
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meet and discuss disputed issues with parties adversely affected by this Order.

When the Order is final, any party to the Order has the right to seek judicial review of the Order pursuant to Section 120.68, F.S., by filing a Notice of Appeal pursuant to Rule 9.110, Florida Rules of Appellate Procedure, with the Clerk of the Department in the Office of General Counsel, 3900 Commonwealth Boulevard, Tallahassee, Florida 32399-3000; and by filing a copy of the Notice of Appeal, accompanied by the applicable filing fees, with the appropriate District Court of Appeal. The Notice of Appeal must be received by the Department Clerk within thirty (30) days from the date this Order was signed by the Department Clerk.

The DEP Facility Number for this site is referenced in the subject line of this letter. Please use this identification on all future correspondence with the Department.

The questions you may have on the technical aspects of this Order of Eligibility should be directed to Mr. William Burns at 850/488-0190. Contact with Mr. Burns does not constitute a petition for administrative determination.

Sincerely,



John M. Ruddell, Director
Division of Waste Management

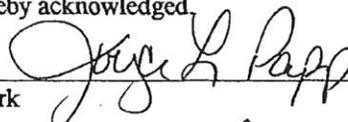
JMR/wbb

cc: Andrew Barron, Southwest District

FILING AND ACKNOWLEDGMENT:

FILED, on this date, pursuant to §120.52, Florida Statutes, with the designated Department Clerk, receipt of which is hereby acknowledged.

Clerk



Date

11 Jan 99

Z 333 618 471

US Postal Service

Receipt for Certified Mail

No Insurance Coverage Provided.

Do not use for International Mail (See reverse)

Sent To <i>J.P. Leitner, Jr.</i>	
Street & Number <i>Plant City Laundry</i>	
Post Office, State, & ZIP Code <i>PO Box 1180</i>	
Postage <i>Plant City</i>	
Certified Fee	<i>33566</i>
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt Showing to Whom & Date Delivered	
Return Receipt Showing to Whom, Date, & Addressee's Address	
TOTAL Postage & Fees	\$
Postmark or Date <i>Mailed 20 Jan 99</i>	

PS Form 3800, April 1995

SENDER:

Complete items 1 and/or additional services.
Complete items 3, 4a, and
Print your name and address on the reverse of this form so that we can return this
card to you.
Attach this form to the front of the mailpiece, or on the back if space does not
permit.
Write "Return Receipt Requested" on the mailpiece below the article number.
The Return Receipt will show to whom the article was delivered and the date
delivered.

I also wish to receive the following services (for an extra fee).
1. Addressee's Address
2. Restricted Delivery
Consult postmaster for fee.

Article Addressed to:

J. P. KEITNER, JR.
DUANT CITY JEWELRY
P.O. Box 1180
DUANT City, FL 33544

Received By: (Print Name)

Signature: (Addressee or Agent)

X *J.P. Keitner, Jr.*

Form 3811, December 1994

4a. Article Number
Z 333 418 471

- 4b. Service Type
- Registered
 - Express Mail
 - Return Receipt for Merchandise
 - Certifie
 - Insurac
 - COD

Date of Delivery
9999

8. Addressee's Address (Only if requested and fees paid)
DUANT CITY FL 33544

102595-98-B-0229 Domestic Return Receipt

UNITED STATES POSTAL SERVICE



First-Class Mail
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USPS
Permit No. G-1C

- Print your name, address, and ZIP Code in this box ●

DC Solvent Cleanup Program, MS#4520
Dept. of Environmental Protection
Twin Towers Office Building
2600 Blair Stone Road
Tallahassee, FL 32399-2400 **Bureau of Waste Cleanup**

JAN 27 1999

**Hazardous Waste
Cleanup Section**

