

FILE

17

RECEIVED-DOCKETING DIV

DE-OHIO EXHIBIT _____

2007 APR -4 PM 5:00

BEFORE

PUCO THE OHIO POWER SITING BOARD

In the Matter of the Application of)
Duke Energy Ohio for a Certificate)
of Environmental Compatibility)
and Public Need for the Construction of)
the C 338 Ohio River to Bethel Natural)
Gas Pipeline Project Located in)
Clermont County, Ohio)

Case No. 06-444-GA-BTX

DIRECT TESTIMONY OF

STEPHEN R. LANE

ON BEHALF OF DUKE ENERGY OHIO

APRIL 4, 2007

This is to certify that the images appearing are an
accurate and complete reproduction of a case file
document delivered in the regular course of business
Technician RB Date Processed 4-5-07

TABLE OF CONTENTS

	<u>PAGE</u>
I. INTRODUCTION.....	- 1 -
II. SUMMARY OF THE PROJECT	- 12 -
III. OVERVIEW OF THE STIPULATION	- 26 -
IV. COMPANY RESPONSES TO TESTIMONY PRESENTED AT THE PUBLIC HEARINGS	- 40 -
V. CONCLUSION	- 47 -

DIRECT TESTIMONY OF STEPHEN R. LANE

I. INTRODUCTION

1 **Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

2 A. My name is Stephen Roy Lane. My business address is 139 East 4th Street, Room 409A,
3 Cincinnati, Ohio 45202.

4 **Q. BY WHOM ARE YOU EMPLOYED AND IN WHAT CAPACITY?**

5 A. I am employed by Duke Energy Ohio, Inc (DE-Ohio) and the Duke Energy Corporation
6 (Duke) as an Environmental Scientist.

7 **Q. PLEASE SUMMARIZE YOUR EDUCATION AND PROFESSIONAL**
8 **QUALIFICATIONS.**

9 A. I have received a Bachelor of Science Degree in Biology, a Bachelor of Arts Degree in
10 Geography, and a Masters of Science degree in Physical Geography. In the past 8 years,
11 I have worked on over 20 Ohio Power Siting Board Applications for certificates of
12 Environmental Compatibility and Public Need for power generation, power delivery, and
13 natural gas delivery projects, in addition to Ohio Power Siting Board notifications for
14 numerous smaller projects in Ohio that did not meet the requirements for a full certificate
15 application. In addition, I have participated in siting and environmental analysis for
16 numerous projects in Indiana, Kentucky, West Virginia, Virginia, North Carolina,
17 Michigan, Pennsylvania and Illinois. I am also a Society of Wetland Scientists Certified
18 Professional Wetland Scientist.

19 **Q. HAVE YOU PREVIOUSLY TESTIFIED BEFORE THE POWER SITING**
20 **BOARD?**

21 A. No, this is my first time testifying before the Power Siting Board.

STEPHEN R. LANE DIRECT TESTIMONY

1 Q. PLEASE SUMMARIZE YOUR DUTIES AS AN ENVIRONMENTAL
2 SCIENTIST.

3 A. One of my main responsibilities at Duke includes the siting and environmental permitting
4 of new electric lines, electric substations, electric generating facilities, and natural gas
5 pipelines.

6 Q. MR. LANE, WHAT HAVE BEEN YOUR RESPONSIBILITIES ON THIS
7 PROJECT TO DATE?

8 A. My responsibilities included development, management, finalization, and submittal of the
9 Application for Certificate of Environmental Compatibility and Public Need for the
10 project. I was responsible for ensuring that the contents of the Application, Application
11 Clarifications, and the supplemental filings were complete and true to the best of my
12 knowledge. I was also responsible for notifying landowners of the hearing dates and
13 locations, developing the landowner communication package, and being available for
14 both landowner and Ohio Power Siting Board field visits and questions. In addition, I
15 assisted legal counsel in developing the FERC Section 7(f) of The Natural Gas Act Filing
16 that was required for the project.

17 Q. MR. LANE, WHAT WILL YOUR RESPONSIBILITIES BE FROM THIS TIME
18 FORWARD?

19 A. My responsibilities will include development of the project's storm water pollution
20 prevention plan, Army Corps of Engineers Section 404 and Section 10 permitting, and
21 ensuring that the conditions of the Stipulation are met.

22 Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

1 A. The purpose of my testimony is to 1) provide a brief summary of the 12-inch C338
2 natural gas pipeline project that is the subject of this case; 2) support the Joint Stipulation
3 that was filed in this case; and 3) to address questions and concerns raised by interveners.

II. SUMMARY OF THE PROJECT

4 **Q. PLEASE PROVIDE A BRIEF SUMMARY OF THE PROJECT.**

5 A. On May 1, 2006, DE-Ohio filed an Application for a Certificate of Environmental
6 Compatibility and Public Need with the Ohio Power Siting Board to construct a new 12-
7 inch C338 natural gas pipeline in Clermont County (Application). This new pipeline is
8 necessary to maintain the reliability of DE-Ohio's natural gas delivery system and to
9 better serve the existing and future natural gas customers. As explained in the
10 Company's Application, DE-Ohio's present natural gas delivery system will not be able
11 to meet projected future demands in Clermont and Brown Counties. Additionally, this
12 proposed line is designed to replace a portion of DE-Ohio's existing pipeline crossing the
13 Little Miami River (River), which, due to the changing course of the River, must be taken
14 out of service for reliability and safety reasons.

15 **Q. WHEN DOES DE-OHIO PLAN TO BEGIN CONSTRUCTION?**

16 A. DE-Ohio plans to begin construction in May 2008 and expects to have the new line in
17 service by November 2008.

18 **Q. PLEASE BRIEFLY PROVIDE A SUMMARY OF THE PROJECT ROUTE.**

19 A. The proposed project will begin at the Ohio River approximately 900 feet west of the
20 intersection of U.S. Route 52 and Neville Spur Road, and connect to an associated
21 pressure reducing station to be located just east of Bethel, Ohio. The total length of the
22 project will be approximately 17 miles.

1 **Q. PLEASE BRIEFLY DESCRIBE HOW THE COMPANY SELECTED THE**
2 **ROUTES PROPOSED IN ITS APPLICATION.**

3 **A.** In choosing the proposed and alternative routes, DE-Ohio evaluated a total of 27 possible
4 routes for the pipeline. The Company narrowed those 27 routes down to 6 likely
5 candidates based upon feasibility of construction. In its Application, DE-Ohio submitted
6 a preferred and alternative route for the project, which in the Company's opinion,
7 presented the most desirable and beneficial options in terms of project need, overall
8 impact, and cost. In reaching a conclusion as to which of those six routes were to be
9 submitted as the preferred and alternative routes, the Company conducted an extensive
10 evaluation taking into consideration many factors. These factors included, but were not
11 limited to, pipeline exposure risk, Clermont County engineering requirements and
12 constraints, overall ecological impact, compatibility of the project with regional
13 development plans, road right of way, project cost and ultimately ratepayer impact. After
14 the submission of the Application, the Staff of the Ohio Power Siting Board began its
15 investigation of the project, including the submitted routes. During the course of this
16 investigation a portion of the preferred route was re-drawn and became known as
17 Preferred Route B. At the time, Preferred Route B appeared to be a viable option that
18 offered a lesser environmental impact than the initially submitted preferred route
19 (Preferred Route A).

20 In the fall of 2006, after receiving feedback from residents in the Community
21 directly affected by Preferred Route B, DE-Ohio retained the expertise of three outside
22 consulting firms, HC Nutting, Energy Management Services and Company and Michaels
23 Corporation, to perform an independent analysis of the design specifications necessary to
24 construct along Preferred Route B. This analysis included both directional drilling and

STEPHEN R. LANE DIRECT TESTIMONY

1 direct burying options as design specifications, to properly construct along Preferred
2 Route B. Based upon this information, it was concluded that a direct bury along
3 Preferred Route A presented the best option with the least impact to the environment. On
4 November 15, 2006, DE-Ohio filed a report detailing this analysis and design with the
5 Power Siting Board. This report recommended that Preferred Route A be selected for the
6 project route rather than Preferred Route B.

7 **Q. WHICH ROUTE IS THE ROUTE AGREED TO IN THE STIPULATION?**

8 A. After a thorough review and investigation, DE-Ohio and the Staff of the Power Siting
9 Board have agreed that Preferred Route A presents the best and least impact to the
10 environment.

11 **Q. HAS THE STAFF OF THE POWER SITING BOARD GONE ON RECORD TO**
12 **SUPPORT PREFERRED ROUTE A?**

13 A. Yes. On March 29, 2007, the Staff filed an addendum to its Staff Report, which among
14 other things, recommended Preferred Route A as the project route subject.

III. OVERVIEW OF THE STIPULATION

15 **Q. DID DE-OHIO ENTER INTO A STIPULATION WITH THE STAFF**
16 **REGARDING THE BETHEL PIPELINE PROJECT THAT IS THE SUBJECT OF**
17 **THIS PROCEEDING?**

18 A. Yes.

19 **Q. DOES THIS STIPULATION RESOLVE ALL ISSUES RAISED BY THE STAFF**
20 **WITH RESPECT TO THE CERTIFICATION OF THE BETHEL PIPELINE**
21 **PROJECT?**

22 A. Yes.

STEPHEN R. LANE DIRECT TESTIMONY

1 Q. MR. LANE, WAS THE STIPULATION A PRODUCT OF SERIOUS
2 BARGAINING BY CAPABLE AND KNOWLEDGEABLE PARTIES?

3 A. Yes it was. DE-Ohio is in the business of providing natural gas distribution services to
4 the consumers located within its service territory. DE-Ohio employs engineers,
5 environmental scientists, and many other highly trained individuals whose job it is to
6 identify needs and develop plans to maintain and improve DE-Ohio's reliability. The
7 Staff of the Ohio Power Siting Board also includes individuals who are experts in
8 environmental and social impact analysis and in the siting and evaluation of natural gas
9 delivery systems. DE-Ohio filed its Application for a Certificate of Environmental
10 Compatibility and Public Need on May 1, 2006. The Application was extensive and
11 contained detailed studies including the justification of the need for the project, technical
12 data, site and route selection analyses, as well as studies addressing ecological,
13 socioeconomic and land use impacts of the project. The Staff of the Ohio Power Siting
14 Board conducted its own investigation and site visits and questioned DE-Ohio about the
15 need for the project and available routes. On September 6, 2006, the Staff issued its
16 report of investigation, which detailed its own analysis of the project and selected
17 Preferred Route B as its choice. Staff's opinion was based upon the evidence available at
18 the time. As discussed above, after receiving feedback from residents in the Community
19 directly affected by Preferred Route B, DE-Ohio retained three outside consulting firms
20 to conduct an in-depth analysis of the construction requirements along Preferred Route B.
21 After reviewing this report, the Staff issued an addendum to the Staff Report on March
22 29, 2007 and recommended the approval of Preferred Route A subject to numerous
23 conditions.

1 Staff and DE-Ohio engaged in several discussions and negotiations in reaching
2 the agreement set forth in the stipulation. The stipulation essentially adopts all the Staff's
3 recommendations as detailed in the Staff Report and the Addendum to the Staff Report,
4 with some modifications.

5 **Q. DO YOU HAVE AN OPINION AS TO WHETHER THE TERMS OF THE**
6 **STIPULATION ARE FAIR AND REASONABLE AND IN THE PUBLIC**
7 **INTEREST?**

8 A. Yes.

9 **Q. PLEASE STATE YOUR OPINION.**

10 A. In my opinion, the terms of the Stipulation are fair reasonable and in the public interest.
11 It is my belief that there is sufficient evidence in the Application to the Power Siting
12 Board for this project to demonstrate that there is a need for this facility to enhance
13 reliability and provide for future growth in the area. Consumers will benefit by the
14 enhanced reliability and ability for communities to grow due to the increased natural gas
15 capacity in the areas. The Stipulation contains many reasonable and fair conditions that
16 balance the interests of DE-Ohio in maintaining its reliability with the interests of the
17 community and our customers while also recognizing the environmental, social, and
18 economic needs of project construction and operation.

19 **Q. UNDERSTANDING THAT YOU ARE NOT AN ATTORNEY, DO YOU HAVE**
20 **AN OPINION AS TO WHETHER THE STIPULATION VIOLATES ANY**
21 **REGULATORY PRINCIPLE OR PRECEDENT?**

22 A. Yes.

23 **Q. WHAT IS YOUR OPINION?**

1 A. In my opinion, based upon my knowledge of the Application and project, as well as my
2 experience with previous Siting Board applications and proceedings, and my knowledge
3 of relevant environmental requirements, the Stipulation does not violate any regulatory
4 principle or precedent. The Stipulation, including the many conditions recommended by
5 the Staff and agreed to by DE-Ohio, is consistent with previous stipulations in recent
6 Power Siting Cases.

IV. COMPANY RESPONSES TO TESTIMONY PRESENTED AT THE PUBLIC HEARINGS

7 Q. WERE YOU PRESENT FOR THE PUBLIC HEARINGS HELD ON SEPTEMBER
8 26, 2006 AND MARCH 14, 2007?

9 A. Yes

10 Q. DID YOU REVIEW THE TRANSCRIPTS FROM THE PUBLIC HEARINGS?

11 A. Yes

12 Q. MR. LANE, HAVE CERTAIN INTERVENING STAKEHOLDERS RAISED
13 ISSUES AND CONCERNS RELATED TO THE PROJECT?

14 A. Yes. Two stakeholders have intervened in this case, the first being Mr. Jerry Howard and
15 the second being the Anthony V. Macke Limited Partnership. Mr. Howard has filed to
16 intervene on the behalf of his mother who utilizes an access road that is also crossed by
17 Preferred Route A. Mr. Howard's position is that of the two preferred routes, Preferred
18 Route A is the better option. Preferred Route A crosses approximately 4,000 feet of the
19 property owned by the Anthony V. Macke Limited Partnership. The Anthony V. Macke
20 Limited Partnership raises several concerns regarding the impact of the project upon their
21 property.

STEPHEN R. LANE DIRECT TESTIMONY

1 Q. MR. LANE, DOES THE COMPANY HAVE ANY RESPONSE TO THE ISSUES
2 RAISED BY THESE INTERVENERS?

3 A. Yes.

4 Q. WHAT IS THE COMPANY'S RESPONSE?

5 A. The Company's response to the issues raised by those intervenors as well as other
6 persons who offered sworn testimony during the public hearings is attached as Exhibit
7 SRL-1. Additionally, the Company has also responded to specific questions and
8 concerns raised by the Anthony V. Macke Limited Partnership in a letter dated November
9 16, 2006, addressed to the Public Utilities Commission of Ohio, and docketed on
10 November 29, 2006. DE-Ohio's response was sent to the Public Utilities Commission of
11 Ohio and the Anthony V Macke Limited Partnership on March 23, 2007 and was
12 docketed the same day.

13 V. CONCLUSION

14 Q. DOES THIS CONCLUDE YOUR DIRECT TESTIMONY IN THIS MATTER?

15 A. Yes.

DE-Ohio's Responses to Testimony given at the September 26, 2006, Public Hearing

Testimony of Ms. Dana Macke

1. Ms. Macke expressed concerns related to preferred route B including slope instability, vegetation removal, construction equipment impacts, construction equipment blocking the access road to Mrs. Howard's home, repair and stabilization of the access road, and right-of-way width.

Company Response: Since first public hearing on September 26, 2006, the position of DE-Ohio and the OPSB Staff has changed in this regard. DE-Ohio and the Staff of the OPSB agree that Preferred Route A represents the better alternative with the least overall impact of the viable routes examined. This is based upon additional engineering information provided to the OPSB Staff detailing some previously unknown and indeterminate impacts related to construction along preferred route B. The Staff of the OPSB has concurred with DE-Ohio and the project interveners on Preferred Route A as the least impact alternative. The Selection of Preferred Route A by the Ohio Power Siting Board will alleviate all concerns regarding Preferred Route B.

2. Ms. Macke stated a preference that the pipeline not to come through the Macke property and that the Macke family would like a review to determine if another route has been overlooked.

Company Response: DE-Ohio has provided a route alternatives analysis as per OAC 4906-15-03 and the OPSB Staff has concurred with that Preferred Route A represents the best routing alternative in consideration potential environmental, socio-economic and cultural impacts and in light of engineering feasibility and project cost. Routing studies do not include an analysis of impacts on individual landowners and justly so for fairness reasons. It is simply unavoidable that some landowners will be impacted by the construction of the natural gas pipeline. The selected route must be the best alternative for all, even though any route selected may not be the best alternative for one or more particular landowner(s). It is important to note that on July 6, 2006, the Ohio Power Siting Board (OPSB) found that DE-Ohio's Application was in complete compliance with the requirements set forth in the Ohio Administrative Code.

3. Ms. Macke had concerns over a 50 foot clearing of woodlot over 4,000 feet of the Macke property in addition to concerns over 3 creeks to be crossed on the Macke property.

Company Response: DE-Ohio has agreed to limit the right-of-way width to 30 feet from U.S. Route 52 to Little Maple Creek, a distance of approximately 1,750 feet. Clearing will also be limited to a 30 foot width within 25 feet of intermittent and perennial streams. A total of 9 drainages including 1 stream and 8

headwaters were identified on the Macke property within the proposed pipeline right-of-way. Four (4) of these drainages (Q1, H7, H3, and H2) were identified as being moderate to high quality as per the Ohio EPA Qualitative Habitat Evaluation Index (QHEI) and Headwater Habitat Evaluation Index (HHEI) scoring methodology guidelines. DE-Ohio has committed to hiring a contractor that specializes in river and stream restoration to restore these higher quality streams once the project is complete.

Mr. Tony Macke

4. Mr. Macke expressed concerns over disturbances related to a prior soil sampling event on the Macke property along the alignment of preferred route A.

Company Response: While it is true that there were issues surrounding the soil sampling, it is DE-Ohio's understanding that this matter has been resolved to the satisfaction of the Mackes. In communication with the Macke's, DE-Ohio repaired the damage that occurred, met our commitments with regard to the hill sampling event, and did so in a highly responsive period.

Mr. Jerry Howard

5. Mr. Howard related numerous concerns over Preferred Route B and the private access road easement that provides access to his mother's home. Mr. Howard felt that Preferred Route B has more slope stability issues, potential property values impact, and environmental impacts compared to Preferred Route A. Mr. Howard also stated concerns over possible landslide problems citing the example of a landslide repair near the home that had to be completed by H.C. Nutting.

Company Response: As stated previously, the Staff of the OPSB has concurred with DE-Ohio and the project interveners on Preferred Route A as the least impact alternative. In addition, DE-Ohio recognizes the geotechnical issues that exist on the Macke property and near the Howard access drive. DE-Ohio has hired H.C. Nutting, the same firm that completed the repair work for the Howards, to design the stabilization measures that will be required in this area. The selection of Preferred Route A by the Ohio Power Siting Board will alleviate all concerns raised regarding Preferred Route B.

6. Mr. Howard had a concern over whether or not they would be able to maintain their access road easement independently if DE-Ohio has the pipeline directly on and adjacent to the access road.

Company Response: The pipeline is required to be installed a minimum of 3 feet below existing grade. According to plans, DE-Ohio will install the pipeline at least 4 feet below existing grade wherever possible. At the location of the Howard's access road, the line will be placed even deeper in order to maintain a 5-foot line depth under Little Maple Creek. Once the line is installed, the

Howards will be able to maintain the access road easement independently, as they have in the past.

7. Mr. Howard stated concerns over the opening of a corridor along Preferred Route A and the impact on the Howard's property value.

Company Response: Any compensation for property value impacts to landowners will be determined when the easement agreements are negotiated. This includes the negotiation for a right-of-way easement across the Howards access road easement.

8. Mr. Howard stated concerns over his mother's relocation while construction is proceeding.

Company Response: DE-Ohio will take all reasonable measures to insure that the disruption to Mrs. Howard is minimized and that as much as possible her ability to access her home is maintained. In the event that any construction activities negatively affect Mrs. Howard, DE-Ohio will make her whole on any expenses that result. Note that if the Board follows the OPSB Staff's recommendation for Preferred Route A, the Howard's access road will only be affected at the crossing point and not along its length, further reducing impacts to Mrs. Howard.

Mr. Paul Berringer, representing the Clermont Soil and Water Conservation District

9. Mr. Berringer expressed concerns over restoration following earth disturbing activities, soil erosion, disruption of drainage, loss of riparian corridor, slope stabilization, and loss of mature trees.

Company Response: DE-Ohio, as required by the Ohio EPA, is in the process of developing erosion control planning as per Ohio EPA's general permit for construction storm water (OHC000002). In addition, DE-Ohio will work with the Clermont County Soil and Water Conservation District in developing these plans and will keep them informed and involved during construction. Drainage pathways and streams will be restored and drainage tiles repaired.

The project has been routed such that streams are crossed perpendicular to the stream alignment, rather than running parallel to, to minimize riparian loss. In addition, clearing will also be limited to a 30 foot width within 25 feet of intermittent and perennial streams to help minimize riparian corridor loss. DE-Ohio in coordination with the OPSB Staff has identified specific stream crossing locations to minimize tree clearing and stream bank disturbance.

DE-Ohio recognizes the geotechnical issues that exist coming out of the Ohio Valley and has hired H.C. Nutting to design the stabilization measures for these areas. Wherever possible, the project has been routed such that the alignment

runs perpendicular to existing contours, rather than running parallel to, to minimize areas of potential instability.

DE-Ohio in coordination with the OPSB Staff has routed the project line through wooded areas such that the maximum number of mature trees is avoided. Inevitably, trees will need to be removed within the right-of-way as not all can be avoided. With respect to the trees that can possibly be saved where the right-of-way is 50 feet, DE-Ohio will work with a professional arborist and take prudent and reasonable measures to maximize the survivability potential of specific pre-determined candidate trees, once the Ohio Power Siting Board has approved a certificate. Due to the nature of the project and impacts to root systems, the survivability of any tree within the easement cannot be guaranteed.

DE-Ohio's Responses to Testimony given at the March 14, 2007 Public Hearing

Mr. Jerry Howard

- 10 Mr. Howard's concerns included access road maintenance, property value, preferred route B versus preferred route A, the possible relocation of Mrs. Howard for a period of the construction, and slope stability.

Company Response: DE-Ohio recognizes that the project may require the relocation of Mrs. Howard for a short period during construction. DE-Ohio also recognizes that Mrs. Howard has pet and plant care commitments that need to be met. DE-Ohio will work with the Howards to insure that these needs are met and will provide financial compensation for any expenses that Mrs. Howard incurs because of such relocation.

Mr. Howard's other concerns are answered above in the responses to the same issues he identified at the September 26, 2006 public hearing.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was sent to the following parties this ____ day
of April 2007 via priority overnight delivery:

HOWARD, JERRY
6838 SCHOOL STREET
CINCINNATI OH 45244

MACKE, ANTHONY V
1879 U.S. ROUTE 52
MOSCOW OH 45153

CLERMONT COUNTY COMMISSIONERS
BOB PROUD COMMISSIONER
101 E MAIN STREET
BATAVIA OH 45103

CLERMONT COUNTY PUBLIC LIBRARY
DAVE MEZACK OPERATIONS COORDINATOR
326 BROADWAY STREET
BATAVIA OH 45103

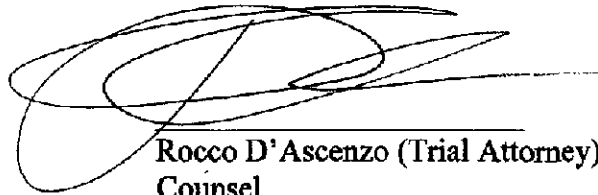
FRANKLIN TOWNSHIP TRUSTEES
MATT CROZIER TRUSTEE
981 HOPEWELL RD
FELICITY OH 45120

TATE TOWNSHIP TRUSTEES
GREG BURNS CHAIRMAN
2655 SPRING STREET
BETHEL OH 45106

VILLAGE OF BETHEL MAYOR OFFICE
120 NORTH MAIN STREET
BETHEL OH 45106

WASHINGTON TOWNSHIP TRUSTEES
VIRGIL POLLARD CHAIRMAN
2238 STATE ROUTE 756
MOSCOW OH 45153

VIRGIL POLLARD CHAIRMAN
2238 STATE ROUTE 756
MOSCOW OH 45153

A handwritten signature in black ink, appearing to read 'R. D'Ascenzo', is written over a horizontal line.

Rocco D'Ascenzo (Trial Attorney)
Counsel
Paul A. Colbert
Associate General Counsel
Duke Energy Ohio, Inc.
139 East Fourth Street, Rm 25 AT II
Cincinnati, OH 45201-0960
Telephone: (513) 287-4326
Fax: (513) 287-3810