

Area B



Division of Waste Management  
1356 Hansford Street  
Charleston, WV 25301  
Telephone: (304) 558-2508  
Fax: (304) 558-3998

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## West Virginia Department of Environmental Protection

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Bob Wise  
Governor

Michael O. Callaghan  
Secretary

May 7, 2002

David E. Bryte  
ECR Investments  
PO Box 861  
Morgantown, WV 26507k

1.

**Re: Former Sterling Plumbing Site, Areas B and D  
Sabraton, Monongalia County, WV  
Project Number VCP 02238  
Originals of Certificate of Completions for Areas B and D**

Dear Mr. Bryte:

Enclosed are two original copies of the Certificates of Completion for Areas B and D of the former Sterling Plumbing site in Morgantown. Please sign each original and return a photocopy to me.

*Land Use (consent)*

If you have any questions, you can reach me at the following:

558-2508 (office Monday-Thursday 7:30-5:30)  
558-3998 (FAX)  
[dhight@dep.state.wv.us](mailto:dhight@dep.state.wv.us)

Sincerely,

A handwritten signature in black ink that reads "David H. Hight".

David H. Hight  
Project Manager,  
Office of Environmental Remediation

/dh

cc: Don Martin, Project Manager Supervisor, OER

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"To use all available resources to protect and restore West Virginia's environment in concert with the needs of present and future generations."



West Virginia  
Department of  
Environmental Protection

Facility: **VRP # : 2238**  
**Kohler Co. (former Sterling**  
**Plumbing Site)**

Applicant:  
**Kohler Co, Rockwell International,**  
**ECR Investments (co-applicants)**

LRS:  
**John Meeks**

LRS # : **8**

Project Manager: **David Hight**

Date: **4/29/02**

## Check List for Certificate of Completion

Check List Steps		Yes	No	Comments
1	Has the property been sub-divided?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
2	Does the COC address the correct tract (sub-division)?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Area B
3	Has the Final Report been approved?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
<b>4 Contents of the COC</b>				
4a	-----Legal description	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
4b	-----List of Chemicals of Concern	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
4c	-----Voluntary Remediation Agreement	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
4d	-----Final Report	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
4e	-----Deed restriction	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
				1. Restriction on penetration of protective cover 2. Restriction on removal of covers or foundations 3. Extration of GW prohibited 4. Restriction of property use to nonresidential 5. Written notice to the Director of any future property transfer 6. Future owners must provide for continued implementation of approve remedy 7. Grants WVDEP future rights of access to property.
4f	-----Land Use Covenant	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
	-----Land Use Covenant recorded	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
4g	-----Engineering Controls	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Impermeable cap, erosion control for banks of Deckers Creek
4a	-----Legal description	<input type="checkbox"/>	<input type="checkbox"/>	

**Comments:**

Semi-annual monitoring of GW and surface water for at least 2 years in conjunction with monitoring work plan approved for Area D

**STATE OF WEST VIRGINIA  
VOLUNTARY REMEDIATION PROGRAM**

**CERTIFICATE OF COMPLETION AND COVENANT**

**AREA B**

ECR Investment Group, LLC, Kohler Company, and Rockwell International Corporation (“Applicants”) entered into a Voluntary Remediation Agreement with the Director of the Department of Environmental Protection (“Director”), dated November 1, 1999, and Amendments dated February 8, 2000, September 26, 2000, September 21, 2001, and October 26, 2001 (collectively referred to as the “Agreement”). The Agreement was entered into to address the release of any contaminants at the former Sterling Plumbing Facility (“Site”) located at 2001 Earl Core Road (WV Route 7), Morgantown, Monongalia County, West Virginia. The following documents are incorporated by reference, unless otherwise specified, as a part of this Certificate and Covenant:

The Voluntary Remediation Program Application, dated June 20, 1997.

The Voluntary Remediation Agreement dated November 1, 1999, and Amendments dated February 8, 2000, September 26, 2000, September 21, 2001, October 26, 2001 and April 29, 2002.

The Final Report and Residual Risk Assessment for Area B, dated February, 2002.

A legal description of Area B (attached as Exhibit A).

A description the contaminants at Area B for which applicable standards are met (attached as Exhibit B).

A description of any institutional or engineering controls that were used at Area B to achieve a remediation standard (attached as Exhibit C).

The land use covenant recorded for this site (See Exhibit D).

This Certificate of Completion for Area B is issued pursuant to W.Va. Code § 22-22-13 to Applicant in recognition of the completion of the work required under the Agreement.

Pursuant to W.Va. Code §§22-22-7(f) 22-22-13, 22-22-14, and 22-22-18, the director of the West Virginia Department of Environmental Protection (“WVDEP”), in the name of and on behalf of the State of West Virginia, now covenants not to bring any civil, criminal or administrative action or claim, resulting from or based upon the release or threatened release of contaminants that were the subject of the Voluntary Remediation Agreement. This covenant shall bar actions against Applicant, Applicant’s successors and assigns, and those persons identified in W.Va. Code §22-22-18, from all public and private claims arising under Chapter 22 of the West Virginia Code or rules adopted thereunder in connection with the release or

threatened release that was the subject of the Voluntary Remediation Agreement. This covenant shall not apply to Applicant's predecessors in title.

### CONDITIONS

This Certificate and the covenant it contains are subject to the terms and conditions set forth below:

1. The following conditions, contained in W.V.A. Code §22-22-15, which may cause the Voluntary Remediation Agreement to be reopened:

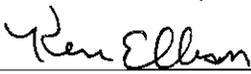
- a) Fraud was committed in demonstrating attainment of a standard at the site that resulted in avoiding the need for further remediation of the site;
- b) New information confirms the existence of an area of previously unknown contamination which contains contaminants that have been shown to exceed the standards applied to the previous remediation at the site;
- c) The level of risk is increased significantly beyond the established level of protection at the site due to substantial changes in exposure conditions, such as, a change in land use, or new information is obtained about a contaminant associated with the site which exposure assumptions beyond the acceptable range. This condition applies only where the level of risk is increased by a factor of at least five or the hazard index exceeds 1, or 10 where multiple systemic toxicants do not affect the same organ;
- d) The release occurred after the effective date of this Article on a site not used for industrial activity prior to the effective date of this Article; the remedy relied, in whole or in part, upon institutional or engineering controls instead of treatment or removal of contamination ; and treatment, removal or destruction has become technically and economically practicable; or
- e) The remediation methods failed to meet the remediation standard or combination of standards.

For purposes of this paragraph, "new information" means any information obtained directly or indirectly by the WVDEP from any person after issuance of a Certificate of Completion, but does not include information the WVDEP has received in the application for participation in the voluntary remediation program, including any site assessment, or other information available to the WVDEP under the voluntary remediation program prior to the execution of the Certificate of Completion. Information that does not qualify as new information may be considered by the WVDEP along with new information if necessary, to determine whether any of the conditions for reopening set out in section 16 of this rule, have occurred.

Where one of the foregoing conditions is found to exist for a portion but not all of the site, this certificate and covenant shall continue to apply to all portions of the site that were unaffected by the occurrence of that condition.

2. To the extent that the Agreement or any of the documents referenced in this certificate impose obligations that continue after the execution of this certificate, there shall be continued compliance with such obligations.
3. This certificate and covenant do not preclude the State of West Virginia from taking any unilateral action at the site, under any existing or future statutory authority, to protect human health and the environment; provided however, in no event shall the State have a right of recovery against Applicant or any other person to whom the covenant herein applies to the extent that such right of recovery arises under Chapter 22 of the West Virginia Code, and relates to matters covered by the Agreement.
4. This certificate and covenant do not preclude the State from seeking recovery of such sums as the Applicant has agreed to pay the WVDEP under the Agreement.

**WHEREFORE**, the director of the Department of Environmental Protection, on behalf of the State of West Virginia, issues this certificate and covenant, with all aforementioned privileges, responsibilities, conditions and reservations, this 6<sup>th</sup> day of May, 2002, to Applicant.

  
\_\_\_\_\_  
Director, Department of Environmental Protection

**EXHIBIT A**

**DESCRIPTION OF SURVEY  
FOR  
AREA "B" STERLING SITE**

All that certain tract or parcel of real estate, lying and being in the Sixth Ward, City of Morgantown, Monongalia County, West Virginia, and more particularly described as follows:

Beginning at a point in the western right of way line of West Virginia Route 7, said point also being located approximately 210 feet from the common corner to the southern right of way line of Eljadio Street and Sterling Faucet Company (Db 819 /Pg 338) a part of the property described herein; thence with said right of way line of Route 7 and Sterling following a curve concave to the northeast, having a radius of 4584.00 feet through an angle of 01° 19' 16" to a point, said curve having a chord bearing and distance of **S 16° 13' 26" E 105.69** feet; thence continuing with said right of way and Sterling

**S 16° 53' 03" E 68.60** feet to a point; thence with a curve concave to the northeast, having a radius of 1939.86 feet

**Southeasterly 117.71** feet along said curve (through an angle of 03° 28' 37") to a point, said curve having a chord bearing and distance of **S 18° 37' 22" E 117.70** feet; thence

**S 17° 29' 30" E 36.98** feet to a point; thence

**S 17° 31' 00" E 36.53** feet to a point; thence leaving said Route 7 and with a new line through said Sterling property

**S 74° 48' 22" W 620.61** feet to a point in the eastern right of way line of said Eljadio Street; thence with said right of way line

**N 30° 57' 10" W 541.63** feet to a 5/8-inch capped iron rod (set); thence

**N 06° 18' 10" W 63.22** feet to a 5/8-inch capped iron rod (set) in the southern right of way line of said Eljadio Street; thence with said right of way line

**N 75° 27' 50" E 259.46** feet to a point; thence leaving said right of way of Eljadio Street

**S 14° 32' 10" E 210.00** feet to a point on the division line of Lots One and Two of said, Sterling Faucet Company and the parcel herein described; thence with said division line **N 75° 27' 50" E 487.00** feet to the place of beginning, **containing 6.84 acres**, more or less, as surveyed in February, 1999, by Triad Engineering, Inc. of Morgantown, West Virginia, and shown as Area "B" on a plat of survey for ECR Investment Group, Inc., dated the 3<sup>rd</sup> day of July, 2000. The

meridian for all bearings in this description is West Virginia State Plane North Zone "Grid North".

Being a portion of the same tracts or parcels of real estate conveyed unto the Sterling Faucet Company, a Delaware corporation by the following deeds; (1) from The Monongalia County

Area "B" Sterling Site  
July 03, 2000  
Page 2

Development Authority, a public corporation by deed dated the 5<sup>th</sup> day of June, 1978, of record in the Office of the Clerk of Monongalia County in Deed Book 806 at Page 633, (2) from The Morgantown Community Association, Inc., a West Virginia corporation, by deed dated the 15<sup>th</sup> day of January, 1979, of record in said Clerk's Office in Deed Book 819 at Page 338. Said tract or parcel of real estate are more specifically show on Tax Map No. 33 as Parcel's 54 and 54.1 and on Tax Map No. 44 as Parcel's 34, 34.01 and 34.02.

Triad Engineering, Inc.

Ronald A. Talkington, P.S. No. 876

**EXHIBIT B**  
**AREA B**  
**LIST OF CONTAMINANTS**

<b>Groundwater</b>	<b>Soils</b>
Cadmium	Copper
Copper	Lead
Lead	Zinc
Manganese	
Nickel	
Zinc	
Benzene	
Ethylbenzene	
Toluene	
Xylene	
Trichloroethene	
Vinyl chloride	
Cis 1,2-dichloroethene	

## **EXHIBIT C**

### **AREA B**

#### **DESCRIPTION OF INSTITUTIONAL AND ENGINEERING CONTROLS**

##### Institutional Controls

A land use covenant has been recorded with the Clerk of the Monongalia County Commission that restricts use of the Site as follows:

1. Prohibits use of the Site for residential purposes, as defined by the Voluntary Remediation Act (WVC § 22 -22-1, et seq).
2. Prohibits installation or use of water wells or other devices for the purpose of withdrawing groundwater from beneath the Site, except as necessary to obtain samples of groundwater for purposes of environmental monitoring.
3. Prohibits all activities that may result in human exposures above those specified by the Agreement or that would result in the release of a contaminant contained as part of the remedial action.

##### Engineering Controls

A Remedial Action Plan has been prepared to install a low permeability cover possessing a minimum thickness of 3 in. of asphalt pavement underlain by a minimum of 6 in. of base stone to minimize potential for contact with contaminated surface soils, and to prevent infiltration of precipitation. Additionally, the remedial action plan requires installation of erosion protection along the stream bank of Deckers Creek to prevent erosion of soil which may contain site related contaminants into the stream.

**EXHIBIT D**  
**LAND USE COVENANT**

WHEREAS, ECR Investment Group, LLC has entered into a Voluntary Remediation Agreement (hereinafter referred to as “the Agreement”) with the Department of Environmental Protection for the State of West Virginia pursuant to the Voluntary Remediation and Redevelopment Act, West Virginia Code §22-22-1 through §22-22-2 (hereinafter referred to as “the Act”), for certain property, located on Earl Core Road (Route 7) in the Sixth Ward of the City of Morgantown, Monongalia County, West Virginia and more particularly described in a deed of record in the office of the Clerk of the County Commission of Monongalia County, West Virginia, in Deed Book No. 1193, at page 308, and

WHEREAS, Paragraph A of the Agreement requires ECR Investment Group, LLC, as the owner of said property, to file a Land Use Covenant with the Clerk of the County Commission of Monongalia County, and

WHEREAS, the Agreement allows certain levels of contamination to remain on the property and requires a land use covenant be recorded in the office of the Clerk of the County Commission of Monongalia County for the purpose of protecting public health and the environment and to prevent interference with the performance, operation and maintenance of any remedial actions required by the Agreement.

NOW THEREFORE, as ECR Investment Group, LLC (hereinafter referred to as “Owner”) and the director have provided in the Agreement, the following restrictions shall apply to this property:

1. The Owner shall prohibit all activities on the property which may interfere with the remedial action required by the Agreement.

2. The Owner shall prohibit all activities that may result in human exposures above those specified by the Agreement or that would result in the release of a contaminant that was contained as part of the remedial action. These activities include, but are not limited to:

- a) Excavation, drilling or penetration through any protective cover placed or installed as a remedial action for the site unless the excavation operations and activities are either performed by a qualified and knowledgeable contractor that is aware of any potential release of a contaminant and has a Health and Safety Plan to protect the public and workers or a contractor working under the direct supervision of a Licensed Remediation Specialist (LRS) or a similarly qualified individual or organization, and
- b) Removal of any covers or building foundations serving as engineering controls for any reason other than installation, removal, or maintenance of underground facilities, expansion of existing buildings or other facilities, or construction of future non-residential facilities. The owner must notify the Director prior to maintenance of underground facilities, expansion of buildings or other facilities, or construction of future non-residential facilities that disturbs any covers or building foundations serving as engineering controls in areas where the soils exceed the Industrial De Minimus Risk-Based Standard, and
- c) Extraction of groundwater at the site for any potable or non-potable use, and
- d) Alteration of the existing or future land use of the site to residential use.

3. The Owner shall restrict the uses of the property to uses other than Residential Land Use as described by the Voluntary Remediation Act (West Virginia Code §22-22-1, et seq). This restriction prohibits use of the property for any residential use, including schools, daycare centers, nursing homes, or other residential-style facilities or recreational areas.

4. The Owner shall provide written notice to the director of the Department of Environmental Protection of the intent to transfer any interest in the property.

5. The Owner shall not convey any title, easement, or other interest in the property without adequate and complete provision for the continued implementation, operation and maintenance of any remedial action that has been implemented on the property pursuant to the Agreement and without assuring prevention of the releases and exposures described in the provisions of paragraph 2, above.

6. The Owner shall grant the West Virginia Department of Environmental Protection and its designated representatives the right to enter the property at reasonable times for the purpose of monitoring compliance with the Agreement, and any Certificate of Completion, including the right to take samples, inspect the operation to evaluate the effectiveness of remedial activities, and inspect records all as provided in the Agreement.

7. The Department of Environmental Protection may enforce the restrictions set forth in this Land Use Covenant by legal action in a court of appropriate jurisdiction.

8. In accordance with the provisions of the Act regarding land use covenants, West Virginia Code §22-22-15 and in addition to any rights or duties contained in the Certificate of Completion, this Land Use Covenant relieves the Owner and any subsequent successors and assigns of the Owner and any person identified in West Virginia Code §22-22-18, from any civil

liability to the State of West Virginia, as provided under the Act, so long as the property complies with the applicable standards identified in the Agreement.

9. The restrictions and other requirements described in this Land Use Covenant shall run with the land and shall be binding upon any future owner, successors or assigns and their authorized agents, employees or persons acting under their direction or control. Subject to subsequent written modification or releases signed by the director and the owner at the time of such modification or release, and filed in the office of the Clerk of the County Commission of Monongalia County, where these covenants have been recorded, this Land Use Covenant shall continue in perpetuity.

10. If any provision of this Land Use Covenant is held to be invalid by any court of competent jurisdiction, the invalidity of such provision shall not affect the validity of any other provisions hereof. All such other provisions shall continue unimpaired and in full force and effect.

11. This Land Use Covenant shall not be amended, modified or terminated except by written instrument executed by and between the Owner at the time of the proposed amendment, modification or termination, and the director of the West Virginia Department of Environmental Protection, or his successor in accordance with regulations promulgated by the director or his successor. Within five days of executing an amendment, modification or termination of this Land Use Covenant, the Owner shall record such amendment, modification or termination with the Clerk of the County Commission of Monongalia County, and within five days thereafter the Owner shall provide a true copy of the recorded amendment, modification or termination to the director of the Department of Environmental Protection.

The undersigned persons executing this Land Use Covenant on behalf of the Owner

represent and certify that they are duly authorized and have been fully empowered to execute and deliver this Land Use Covenant.

IN WITNESS WHEREOF, the said Owner of the above-described property and the director of the Department of Environmental Protection, have caused this Land Use Covenant to be executed this 6<sup>th</sup> day of MAY, 2002.

ECR INVESTMENT GROUP, LLC  
By David E. Bayte  
Its MANAGING MEMBER

DEPARTMENT OF ENVIRONMENTAL PROTECTION  
By Ken Ellison  
Its Director

STATE OF WEST VIRGINIA,  
COUNTY OF MONONGALIA, TO-WIT:

I, Sandra Elaine Franks a Notary Public in and for the State and County aforesaid, do hereby certify that David E. Bayte, the Managing Member of ECR Investment Group, LLC, whose name is signed to the writing above, bearing date the 6<sup>th</sup> day of MAY, 2002, has this day acknowledged same to be his true act and deed.

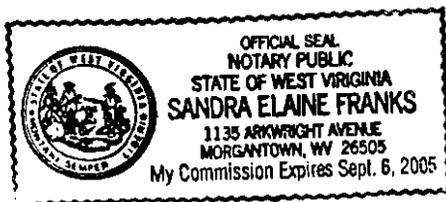
Given under my hand this the 13<sup>th</sup> day of May, 2002.

My commission expires:

9/6/05

Sandra Elaine Franks

Notary Public



STATE OF WEST VIRGINIA,  
COUNTY OF KANAWHA, TO-WIT:

Rhonda F. Mc Glothlin, a Notary Public in and for the State and County

aforsaid, do hereby certify that Ken Ellison, the Director of the Department of Environmental Protection, whose name is signed to the writing above, bearing date the 6<sup>th</sup> day of May, 2002, has this day acknowledged same to be his true act and deed.

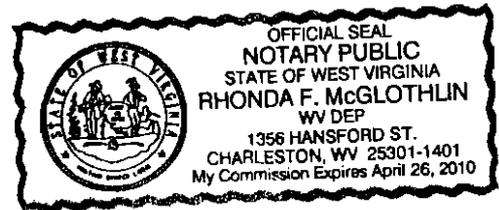
Given under my hand this the 6<sup>th</sup> day of May, 2002.

My commission expires:

April 26, 2010

Rhonda F. Mc Glothlin

Notary Public



PREPARED BY: West Virginia Department of Environmental Protection

STATE OF WEST VIRGINIA,  
COUNTY OF MONONGALIA  
TO WIT:

I, Michael A. Oliverio, Monongalia County Clerk, do hereby certify that the foregoing writing, with certificate thereto annexed, was this day produced to me in my office and duly admitted to record.

Witness my hand

Michael A. Oliverio, Clerk

Monongalia County Clerk  
Michael A. Oliverio  
AGREEMENT Drawer 4  
Date/Time: 05/25/2005 13:33  
Inst #: 193499  
Recd/Tax: 7.00 .00