

**STATE OF WEST VIRGINIA
VOLUNTARY REMEDIATION PROGRAM
CERTIFICATE OF COMPLETION AND COVENANT**

AREA C

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, and October 26, 2001.

The Final Report and Residual Risk Assessment for Area C, dated December 17, 2001.

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

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

A description of any institutional or engineering controls that were used at Area C 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 C 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.VA. Code §22-22-15, which may cause the Voluntary Remediation Agreement to be reopened:

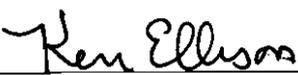
- a) fraud was committed in demonstrating attainment of a standard at the site that resulted in avoiding the need for further remediation of the site;
- b) new information confirms the existence of an area of previously unknown contamination which contains contaminants that have been shown to exceed 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.
- f) The Draft Human Health and Ecological Risk Assessment for Deckers Creek is currently under review by OER and its contractor. A preliminary review by the contractor did not indicate that there were any issues related to Area C (assuming monitoring of the groundwater for VOCs as outlined in the Final Report). Should the reviewers find any deficiencies or need for remedial action upon final review of the RA, these will be addressed in the Remedial Action Workplan and Final Report for Area D, to be submitted within 1 year of the date of the COC for Area C.

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 20th day of December, 2001, to Applicant.



Director, Department of Environmental Protection

April 06, 2001

**DESCRIPTION OF SURVEY
FOR
AREA "C" 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 track spike (found) in a common corner to Alan Enterprises (Db 1055 /Pg 239) and ECR Investment Group, LLC (Db 1193 /Pg 308), a part of the property described herein, said track spike also being in the northern right of way line of Eljadio Street; thence leaving said Alan Enterprises and with said Eljadio Street and ECR Investment Group, LLC

S 75° 27' 50" W 559.74 feet to a point in Deckers Creek, passing through a 5/8-inch capped iron rod (set) on the western right of way line of said Eljadio Street at 519.18 feet; thence down said Creek, continuing with said ECR Investment Group, LLC

N 05° 58' 53" W 53.48 feet to a point; thence

N 30° 47' 07" E 445.49 feet to a point; thence

N 13° 30' 41" W 148.00 feet to a point on the western bank of said Deckers Creek; thence

N 34° 25' 41" W 122.70 feet to a point in said Deckers Creek and in the eastern right of way line of an abandoned railroad, now or formerly the B & O Railroad; thence with said railroad right of way

N 13° 36' 19" E 16.89 feet to a point in a common corner to The Kroger Company (Db 1093 /Pg 67) and said ECR Investment Group, LLC; thence leaving said Deckers Creek and railroad right of way and with said Kroger and ECR Investment Group, LLC

N 87° 27' 14" E 354.57 feet to a track spike (set), in a common corner to said Kroger and ECR Investment Group, LLC, said track spike also being in the line of R & L Associates (Db 1149 /Pg 78), passing through a 5/8-inch capped iron rod (set) at 54.57 feet; thence leaving said Kroger and with said R & L Associates and ECR Investment Group, LLC

S 06° 29' 21" E 576.39 feet to the place of beginning, **containing 5.432 acres**, more or less, as surveyed in February, 1999, by Triad Engineering, Inc. of Morgantown, West Virginia, and shown as part of Tract No. 2 on a plat of survey for ECR Investment Group, Inc., dated September 17, 1999. The meridian for all bearings in this description is West Virginia State Plane North Zone "Grid North".

Area "C"

April 06, 2001

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Being a portion of the same tracts or parcels of real estate conveyed unto ECR Investment Group, LLC, from Kohler, Incorporated, by deed dated the 8th day of February, 2000, of record in the Office of the Clerk of Monongalia County, West Virginia, in Deed Book 1193, at Page 308. Said tract or parcel of real estate is more specifically show on Tax Map No. 33 as Parcel No. 51.

Triad Engineering, Inc.

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

EXHIBIT B

**AREA C
LIST OF CONTAMINANTS**

Cadmium	Acetone
Copper	Methyl ethyl ketone
Lead	
Manganese	
Nickel	
Zinc	
Benzene	
Ethylbenzene	
Toluene	
Xylene	
Trichloroethene	
Vinyl chloride	
Cis 1,2-dichloroethene	

EXHIBIT C

AREA C

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 implemented which installed a clean soil cover possessing a minimum thickness of 2 ft. to minimize potential for contact with contaminated surface soils.

Atkins Oblak & Beatty, PLLC

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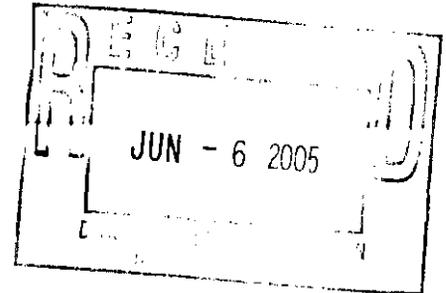
James C. Riley **
of Counsel

* Also admitted in PA and DC

** Admitted in PA only

June 3, 2005

Mr. David Hight
Office of Environmental Remediation
West Virginia Department of Environmental
Protection
1356 Hansford Street
Charleston, WV 25301



RE: VRA #02238
Sterling Plumbing Facility
2001 Earl Core Road, Morgantown, Monongalia
County, West Virginia

Dear Mr. Hight:

Enclosed is a copy of the recorded Land Use Covenant for the ECR Investment Group,
LLC sale.

Very truly yours,

ATKINS OBLAK & BEATTY, PLLC

Billy Atkins
Billy Atkins

BA/cb

Enclosure

470395
1294-599

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 6th day of MAY, 2002.

ECR INVESTMENT GROUP, LLC

By David E. Byrte

Its MANAGING MEMBER

DEPARTMENT OF ENVIRONMENTAL PROTECTION

By Ken Ellison

Its Director

STATE OF WEST VIRGINIA,

COUNTY OF MONONGALIA, TO-WIT:

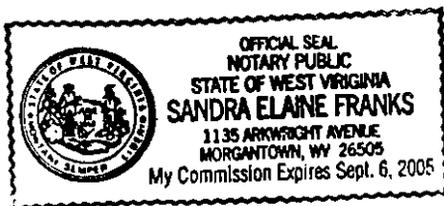
I, Sandra Elaine Franks a Notary Public in and for the State and County aforesaid, do hereby certify that David E. Byrte, the Managing Member of ECR Investment Group, LLC, whose name is signed to the writing above, bearing date the 6th day of MAY, 2002, has this day acknowledged same to be his true act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

Given under my hand this the 13th day of May, 2002.

My commission expires:
9/6/05

Sandra Elaine Franks

Notary Public



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

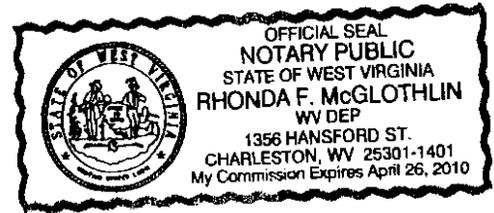
Rhonda F. Mc. Glotthlin, a Notary Public in and for the State and County
aforesaid, do hereby certify that Ken Ellison, the Director of the Department
of Environmental Protection, whose name is signed to the writing above, bearing date the
6th day of May, 2002, has this day acknowledged same to be his true act and deed.

Given under my hand this the 6th day of May, 2002.

My commission expires:
April 26, 2010

Rhonda F. Mc. Glotthlin

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