

**LAND USE COVENANT
AMHERST DOCK FACILITY**

Amherst Industries, Incorporated and PC West Virginia Synthetic Fuel #1, LLC (Co-Applicants) have entered into a Voluntary Remediation Agreement dated June 14, 1999, (hereinafter referred to as "the Agreement") with the Division of Environmental Protection for the State of West Virginia pursuant to the Voluntary Remediation and Redevelopment Act, W.Va. Code §§ 22-22-1 through 22-22-2 (hereinafter referred to as "the Act"), for certain property, Amherst Dock Facility, 14989 MacCorkle Avenue, Chelyan, West Virginia 25035. The site is further described in a deed of record (Deed Book 1319, page 204) in the office of the Clerk of the County Commission of Kanawha County, West Virginia. Paragraph 78 of the Agreement requires Amherst Industries, Incorporated and PC West Virginia Synthetic Fuel #1, LLC (Co-Applicants), as the owner(s) of said property, to file a Land Use Covenant with the Clerk of the Kanawha Commission. 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 Kanawha County Commission for the purposes 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 Amherst Industries, Incorporated and PC West Virginia Synthetic Fuel #1, LLC (Co-Applicants), and the director have provided in the Agreement, the following restrictions shall apply to this property:

1. The Owner shall restrict the uses of the property to commercial and industrial use. 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.
2. The owner shall prohibit all activities on the property that may interfere with the remedial action required by the Agreement.
3. 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:

Recorded In DEED BK 2525 Pg 699, 05/16/2001 11:41:35 AM Deed Tax 0.00, Recording Fee 9.50, TOTAL 9.50
Alma Y. Kins, County Clerk, Kanawha County, WV

- a) Excavation, drilling or penetration of the current paved area, below a depth of six feet from the surface, including the floors of the existing building (See **Figure 1**) 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 (available at the site) 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.

The current paved area, including the floors of existing buildings, shall be maintained in a contiguous, unbroken, impermeable condition. If excavated material is found to be contaminated, the removed materials shall be disposed in a proper manner. Following completion of construction, the exposed surface within the area of the former paving, shall be covered with concrete or paving in a similar manner to the pre-construction surface that results in a contiguous, unbroken, impermeable surface.

- b) Extraction of groundwater at the site for any potable or non-potable use.
4. The Owner shall provide written notice to the director of the Division 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 Division 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 the 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 Division 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, W. Va. 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 any person identified in W. Va. Code §22-22-18 from all civil liability to the state 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 owners, successors or assigns and their authorized agents, employees or persons acting under their direction or control. Subject to subsequent written modification or release 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 the 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 Division of Environmental Protection, or his successor in accordance with regulations promulgated by the director or his successor. Within 5 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 Kanawha County Commission, and within 5 days thereafter, the Owner shall provide a true copy of the recorded amendment, modification or termination to the director of the Division of Environmental Protection.

IN WITNESS WHEREOF, the said Owner of the above described property and the director of the Division of Environmental Protection have caused this Land Use Covenant to be executed this 4th day of April, 2001

SIGNED:

Mark T. Jones
Co-Applicant - Amherst Ind.

Ken Ellison Chief
Director, Division of Environmental Protection

Warren J. Biss
Co-Applicant - Pace Carbon

I, Kathy W. Spence, a Notary Public in and for the State and County aforesaid, do hereby certify that Charles J. Jones, whose name is signed to the writing above, bearing date the 4th day of April, 2001, has this day acknowledged same to be his true



act and deed. Given under my hand this the 4th day of April, 2001
My commission expires 6/22/02

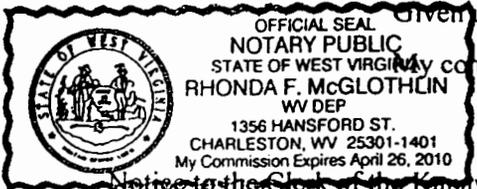
Kathy W. Spence
Notary Public

I, Sandra M. Turcotte, a Notary Public in and for the State and County aforesaid, do hereby certify that Warren J. Biss, whose name is signed to the writing above, bearing date the 10th day of April, 2001, has this day acknowledged same to be his true act and deed.

Given under my hand this the 10th day of April, 2001
My commission expires March 31, 2005

Sandra M. Turcotte
Notary Public

I, Rhonda F. McGlothlin, a Notary Public in and for the State and County aforesaid, do hereby certify that Ken Ellison, whose name is signed to the writing above, bearing date the 30th day of April, 2001, has this day acknowledged same to be his true act and deed.



Given under my hand this the 30th day of April, 2001
My commission expires April 26, 2010

Rhonda F. McGlothlin
Notary Public

Notice to the Clerk of the Kanawha County Commission:

It is requested that a true and executed copy of the recorded deed with this attached Land Use Covenant be forwarded to the Director of Division of Environmental Protection.