

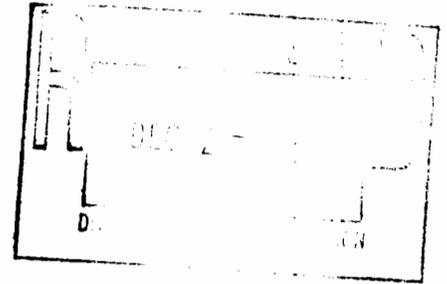


JAMEGY, INCORPORATED

December 20, 2005

Ken Ellison, Director  
WVDEP Division of Land Restoration  
601 57th St. S. E.  
Charleston, WV 25304

Re: Land Use Restrictions – VRA No. 03661  
Jamegy, Inc. Site  
New Cumberland, Hancock County, West Virginia



Dear Mr. Ellison:

As a follow up to your letter dated November 22, 2005, enclosed please find a copy of the land use covenant for the Jamegy, Inc. site located in New Cumberland, WV that was recorded with the Hancock County Clerk on December 14, 2005.

Please contact me at (304) 564-5694 if you have any comments or questions regarding this matter.

Sincerely yours,

A handwritten signature in black ink that reads "D. Megy".  
Devin Megy  
President

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**LAND USE COVENANT**

Jamegy, Inc. ( hereinafter referred to as "Owner") 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, W.Va. Code § 22-22-1 through 22-22-2 (hereinafter referred to as "the Act"), for certain property, located at South Chester Street, New Cumberland, Clay District, Hancock County, West Virginia and more particularly described as follows:

**BEGINNING** at the northeast corner of a 3.16 acre tract of land formerly lands of Jamegy WV, Inc., now lands of the Owner, by deed on record in the Office of the Clerk of the County Court, Hancock County, West Virginia in deed book 247-page 128; said point being in the west right of way line of the railroad; said corner also being located south 56 degrees 56 minutes west 201.1 feet and then north 33 degrees 04 minutes west 28.96 feet from a fire hydrant located at the corner of South Chestnut Street and a 30 foot right of way as shown on a plat of survey for Barkhurst Construction, Inc., dated February 3, 1995; thence with the division line of the railroad and the 3.16 acre tract south 33 degrees 04 minutes east 259.38 feet to nail set in blacktop; thence through the 3.16 acre tract (and along the center of a building wall) south 56 degrees 56 minutes west 223.17 feet to the west line of the 3.16 acre tract and in the east edge of the Ohio River; thence up said river and with the lines of the 3.16 acre tract north 41 degrees 12 minutes west 12.13 feet to a point; thence north 38 degrees 35 minutes west 323.82 feet to a point at the northwest corner of the 3.16 acre tract; thence continuing along said river and with the west line of the .41 acre tract conveyed to the Owner, as on record in the Office of the Clerk of the County Court, Hancock County, West Virginia, in deed book 247-page 128; north 36 degrees 04 minutes west 147.23 feet as shown on the aforementioned plat of survey for Barkhurst Construction, Inc., to the northwest corner of the .718 acre tract (deed calls for north 34 degrees 15 minutes west 68 feet and north 35 degrees 43 minutes west 120 feet); thence with the division line of Jamegy WV, Inc., now lands of the Owner, and other lands of Barkhurst Construction north 54 degrees 31 minutes east 263.95 feet to the west side of the railroad (deed calls for north 54 degrees 35 minutes east 250

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feet); thence with the east lines of the .41 acre tract and the .718 acre tract south 33 degrees 04 minutes east 233 feet to the place of beginning, containing 2.75 acres, more or less.

**BEING** the same parcel conveyed to the Owner by deed of Jamegy WV, Inc., dated the 3<sup>rd</sup> day of September, 1999 and recorded in the Office of the Clerk of the County Commission of Hancock County, West Virginia, in deed book 247-page 128.

Section XXV, Paragraph 79 of the Agreement requires the Owner of said property to file a Land Use Covenant with the Clerk of the Hancock 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 Hancock 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 the Owner and the Secretary 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) The extraction of ground water for any purpose other than monitoring,

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(b) Excavation activities that have the potential to encounter groundwater without an appropriate and approved Health and Safety Plan such as detailed in the Final Report, and

(c) Construction of new buildings that fail to incorporate appropriate engineering controls on vapor intrusion to indoor air from underlying soil and groundwater.

3. The Owner shall restrict the uses of the property to nonresidential uses only.

4. The Owner shall provide written notice to the Secretary 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 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 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, 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 Secretary 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.

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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 Secretary of the West Virginia Department of Environmental Protection, or his successor in accordance with regulations promulgated by the Secretary 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 Hancock Commission, and within 5 days thereafter, the Owner shall provide a true copy of the recorded amendment, modification or termination to the Secretary of the Department of Environmental Protection.

IN WITNESS WHEREOF, the said Owner of the above described property and the Secretary of the Department of Environmental Protection have caused this Land Use Covenant to be executed this 21<sup>st</sup> day of November, 2005.

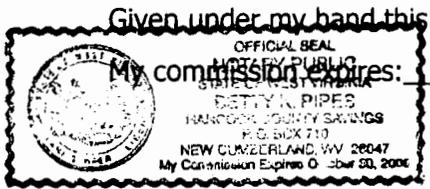
SIGNED:

Devin Megy  
Jamegy, Inc.  
By Devin Megy, its President

SIGNED:

Stephanie R. Timmermyer  
West Virginia Department of Environmental  
Protection, by Stephanie R. Timmermyer, its Secretary

I, Betty Pipes a Notary Public in and for the State and County aforesaid, do hereby certify that Devin Megy, President, who signed the above writing bearing date the 28 day of Sept, 2005, for Jamegy, Inc., has this day acknowledged before me the said writing to be the act and deed of said Corporation.



Given under my hand this 28 day of Sept, 2005  
10-30-2000  
Betty Pipes  
Notary Public

I, Rhonda F. McGlothlin, a Notary Public in and for the State and County aforesaid, do hereby certify that Stephanie R. Timmermyer, Secretary, who signed to the writing above, bearing date the 21<sup>st</sup> day of November, 2005, for the West Virginia Department of Environmental Protection, has this day acknowledged before me the said writing to be the act and deed of said Agency.

Given under my hand this the 21<sup>st</sup> day of November, 2005  
My commission expires: April 26, 2010



Rhonda F. McGlothlin  
Notary Public

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Please return to:

West Virginia Department of Environmental Protection  
Secretary, Stephanie R. Timmermyer  
601 57<sup>th</sup> Street  
Charleston, WV 25303

This document prepared by James T. Carey, Esq., MANYPENNY & CAREY LAW  
OFFICE, 106 Court Street - PO Box 638, New Cumberland, WV 26047

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Revision: September 15, 2005

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State of West Virginia, County of Hancock, to-wit:  
I, Eleanor Straight, Clerk of the County Commission of the County aforesaid, do hereby certify  
that the foregoing writing dated **November 21, 2005**, and together with the certificate of  
acknowledgment thereto, was presented for and by me duly admitted to record on **November 30,**  
**2005, at 11:03 A. M.**

  
\_\_\_\_\_  
Eleanor Straight, County Clerk

*State of West Virginia,  
County of Hancock*

*I, ELEANOR STRAIGHT, Clerk of the County Commission of Hancock County, having the custody of the Files, Journals and Records of said Commission, do hereby certify that the foregoing is a true and accurate copy of: Deed*

(Land Use Covenant) between Jamegy, Inc. and West Virginia Department of Environmental Protection

*as the same appears of record in my office, in \_\_\_\_\_ Deed \_\_\_\_\_ Book No. 276  
Page 206, and I further certify that the same is a full and correct transcript thereof.*

*In Witness Whereof, I have set my hand and affixed the seal of said commission at New Cumberland, Hancock County, West Virginia, this 14th day of \_\_\_\_\_  
December, 2005.*

  
\_\_\_\_\_  
*Eleanor Straight, County Clerk  
Hancock County, West Virginia*