

APPENDIX 60-3E

LAND USE COVENANT

[To be used where applicant is the owner of the property covered by the Voluntary Remediation Agreement].

RANDALL L. TENNEY 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 2 Clarksburg Road in Buckhannon Corporation District, Upshur County, West Virginia and more particularly described in a deed of record in the office of the Clerk of the County Commission of Upshur County, West Virginia. Paragraphs 71 and 75 of the Agreement require RANDALL L. TENNEY, as the owner of said property, to file a Land Use Covenant with the Clerk of the Upshur County 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 Upshur 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 RANDALL L. TENNEY, 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. (Note: Further remediation is not required for this site, as of the dates of preparing/filing/recording this covenant).

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 or other activities resulting in contact with soils at the property that exceed the Residential De Minimis Risk-Based Standard, unless the excavation or other activities are performed by either (i) a qualified and knowledgeable contractor who is aware of the past contamination at the property and has a health and safety plan to protect the public and workers from that contamination, or (ii) by a contractor working under the direct supervision of a Licensed Remediation Specialist. The owner must notify the Director prior to such activities.
 - (b) Extraction of groundwater at the site for any potable or non-potable use.
3. The Owner shall restrict the uses of the property to commercial/industrial uses, in accordance with local zoning requirements.
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. (No remedial actions are required).
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.

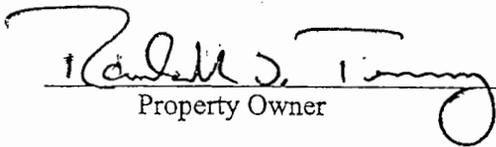
7. The Department of Environmental Protection may enforce the restrictions set forth in this Land Use Covenant by legal action in a court of appropriate jurisdiction.
8. In accordance with the provisions of the Act regarding land use covenants, W. Va. Code §22-22-15 and in addition to any rights or duties contained in the Certificate of Completion, this Land Use Covenant relieves the Owner and any subsequent successors and assigns of the Owner including 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 Department 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 Upshur 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 Department of Environmental Protection.

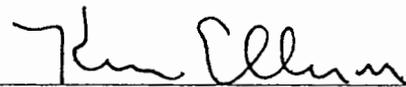
The undersigned persons executing this Land Use Covenant on behalf of the Owner represent and certify that they are duly authorized and have been fully empowered to execute and deliver this Land Use Covenant.

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 9 day of June, 2004.

SIGNED:



Property Owner



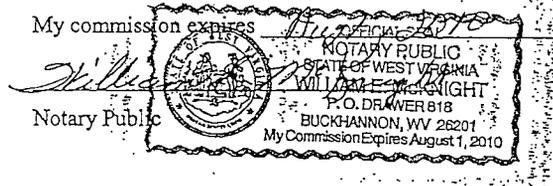
Director, Department of Environmental Protection

I, William E. McNight, a Notary Public in and for the State and County aforesaid, do hereby certify that Randal L. Terry, whose name is signed to the writing above, bearing date the 9 day of June, 2004, has this day acknowledged same to be his true act and deed.

Given under my hand this the 9 day of June, 2004.

My commission expires _____

Notary Public



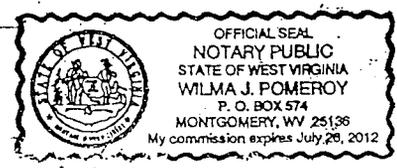
I, Wilma J. Pomeroy, a Notary Public in and for the State and County aforesaid, do hereby certify that Ken Ellison, whose name is signed to the writing above, bearing date the 9th day of June, 2004, has this day acknowledged same to be his true act and deed.

Given under my hand this the 9th day of June, 2004.

My commission expires 07-26-2012

Notary Public

Wilma J. Pomeroy



[Include instructions to the Clerk directing that the recorded document be returned to the Director of the DEP.]

PREPARED BY MSES CONSULTANTS INC PO BOX 190 CLARKSBURG WV 26302-0190

UPSHUR COUNTY, WV
FILED
August 23, 2004 13:12:49
DEBBIE THACKER WILFONG
COUNTY CLERK
TRANSACTION NO: 2004010076
DEEDS
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