

## LAND USE COVENANT

**FORMER PENNZOIL-QUAKER STATE ETOWAH TERMINAL  
1015 BARLOW DRIVE  
CHARLESTON, WEST VIRGINIA  
VRP No. 04506**

Pennzoil-Quaker State (PQS, now PQS dba SOPUS Products) entered into a Voluntary Remediation Agreement executed on April 15, 2002 (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 22-22-21 (hereinafter referred to as "the Act"), for certain property, located at 1015 Barlow Drive in Charleston, Kanawha County, West Virginia and more particularly described in a deed of record (Deed Book 1576, page 141 and 142) in the office of the Clerk of the County Commission of Kanawha County, West Virginia. In the Agreement, the current owner of this property, Etowah River Terminal, LLC, hereinafter referred to as "Owner," has agreed to the imposition of the restrictions on this property, as required by the Agreement (Paragraph 75). 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**, 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 or other penetration of the subsoil below the water table in the yellow shaded area of Figure 1 shall be by a contractor who is qualified and knowledgeable about releases and exposure to contaminants known to exist at the site. The contractor will be required to perform the work in accordance with a site specific Health and Safety Plan developed by an LRS or similarly qualified individual. Alternately, a contractor working under the direct supervision of an LRS, or similarly qualified individual may be used.

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.
3. The Owner shall restrict the uses of the property to:

Recorded In DEED BK 2618 PG 804, 12/07/2004 01:13:41 PM Deed Tax 0.00, Recording Fee 6.00, TOTAL 6.00  
Alma Y. Kins, County Clerk, Kanawha County, WV

- a) Commercial and industrial use. The restriction prohibits use of the property for any residential use, including schools, daycare centers, nursing homes, or any other use considered to be residential in nature.
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 applicant, its successors and assigns, the Owner and any subsequent successors and assigns of the Owner, and 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.
  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 Kanawha 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 7<sup>th</sup> day of December, 2004.

SIGNED:

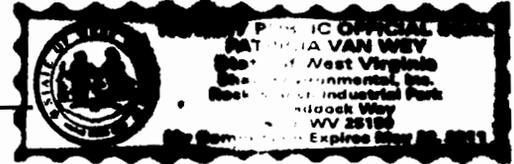
[Signature]  
Property Owner

[Signature] Director  
Secretary, Department of Environmental Protection

I, Patricia VanWey, a Notary Public in and for the State and County aforesaid, do hereby certify that Danny Ferrell, whose name is signed to the writing above, bearing date the 17<sup>th</sup> day of November, 2004, has this day acknowledged same to be his true act and deed.

Given under my hand this the 17<sup>th</sup> day of November, 20 04.  
My commission expires May 23, 2011

Patricia VanWey  
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 7<sup>th</sup> day of December, 2004, has this day acknowledged same to be his true act and deed.

Given under my hand this the 7<sup>th</sup> day of December, 20 04.  
My commission expires April 26, 2010

Rhonda F. McGlothlin  
Notary Public

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

This instrument was presented to the Clerk of the County Commission of Kanawha County, West Virginia, on and the same is admitted to record.

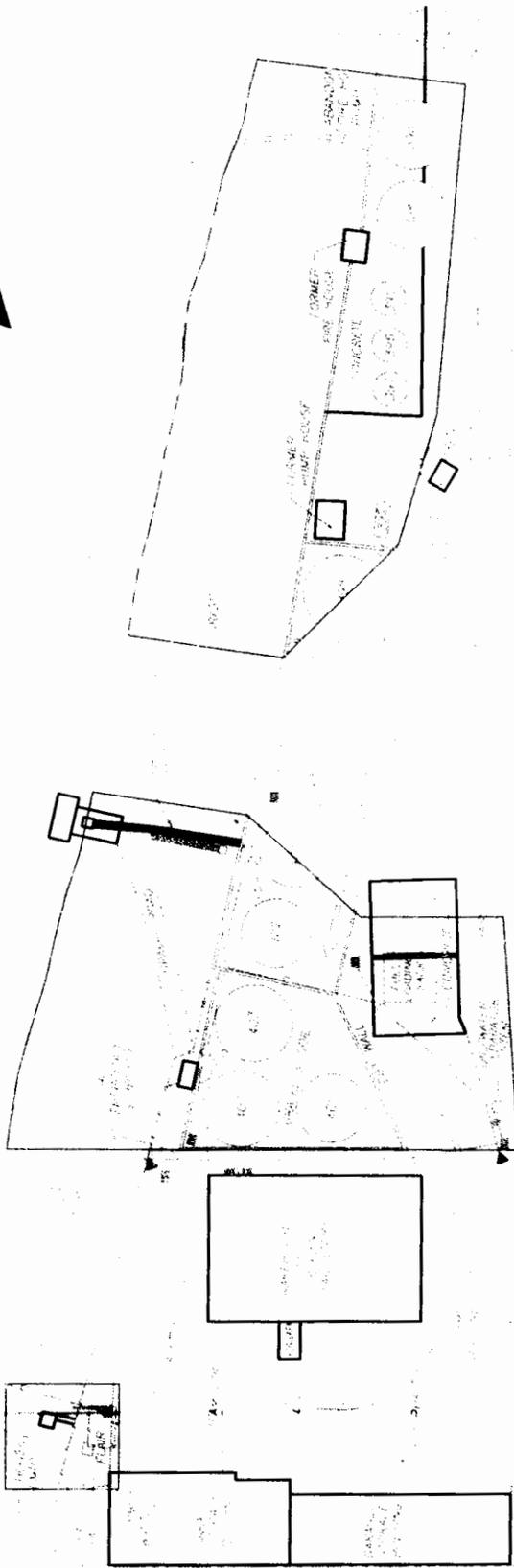
DEC 07 2004

Teste: [Signature] Clerk 4  
Kanawha County Commission



O:\Shaw Offices - CAD Files\poca\845335\845335A1.dwg  
 Plot Date/Time: 11/17/04 03:18pm Xref: --  
 Plotted by: arthur.smith Image: SCAN-1

OFFICE	DATE	DESIGNED BY	DRAWN BY	CHECKED BY	APPROVED BY	DRAWING NUMBER
Pittsburgh, PA	11/17/04	--	A. Smith	G. Roberston	--	845335-A1



**LEGEND:**

	RAILROAD TRACKS
	NATURAL GAS PIPELINE
	FENCE LINE
	STORM SEWER
	DRAIN
	AREA REQUIRING PROCEDURES SPECIFIED IN THE LAND-USE COVENANT FOR EXCAVATION OR PENETRATION BELOW THE WATER TABLE



PQS dba SOPUS PRODUCTS

**FIGURE 1**  
**SITE PLAN**  
 FORMER PQS ETOWAH TERMINAL  
 1015 BARLOW DRIVE  
 CHARLESTON, WEST VIRGINIA