

This instrument is being re-recorded to correct errors appearing on page 2 in the acreage for the VRRRA site and for Areas 1 and 2.

### LAND USE COVENANT

This is an environmental covenant executed pursuant to the Voluntary Remediation and Redevelopment Act, West Virginia Code Chapter 22, Article 22, and the Uniform Environmental Covenants Act, West Virginia Code Chapter 22, Article 22B, to restrict the activities on, and uses of, the following described property:

Property described in the attached drawing as "V.R.R.A. Area 1" and "V.R.R.A. Area 2". The property is located at Copenhaver Park, above Hanna Drive in North Charleston Corporation District, Kanawha County, West Virginia, and is a part of a tract consisting of approximately 80 acres, more or less, particularly described in a deed of record, Deed Book 1104 Page 317, in the office of the Clerk of the County Commission of Kanawha County, West Virginia.

Activities on and uses of the above described property that may result in excessive human exposure or in the release of a contaminant that was contained as part of the remedial action related to this covenant are prohibited. Those activities and uses include, but are not limited to:

- a. The extraction of groundwater for any use except groundwater monitoring.
- b. No construction, excavation, or disturbance of subsurface soils in the area of the property illustrated in the attached drawing, referred to as the Upper Sludge Impoundment, shall be conducted to a depth greater than two (2) feet below the surface without prior notification to the Secretary of the West Virginia Department of Environmental Protection. Prior to initiating excavation activities, an appropriate property-specific Health and Safety Plan, identifying proper controls and protective measures to prevent environmental releases and worker exposure to chemical hazards, shall be approved by a West Virginia Licensed Remediation Specialist. The owner shall otherwise manage the use of the restricted area in accordance with the Voluntary Remediation and Redevelopment Act.
- c. Construction of any enclosed structures without engineering controls to mitigate vapor intrusion in the Upper Sludge Impoundment area illustrated in the attached drawing.

The current Owner of record of the property, and its contact information, is as follows:

The City of Charleston  
c/o Charleston Sanitary Board  
208 26<sup>th</sup> Street  
Charleston, West Virginia 25312  
Attn: General Manager

~~DEED 2741 618  
Recorded In Above Book and Page  
04/07/2009 11:42:18 AM  
Vera J. McCormick  
County Clerk  
Kanawha County, WV~~

Deed Tax 0.00  
Recording Fee 12.00  
TOTAL 12.00

*re-recorded*

Recorded In DEED BK 2750 Pg 979, 08/10/2009 09:06:20 AM Deed Tax 0.00, Recording Fee 12.00, TOTAL 12.00  
Vera J. McCormick, County Clerk, Kanawha County, WV

Any person, including a person that owns an interest in the real property, the state or federal agency determining or approving the environmental response project pursuant to which an environmental covenant is created, or a municipality or other unit of local government may be a holder of an environmental covenant. The following are all of the holders of this covenant:

The City of Charleston  
c/o Charleston Sanitary Board  
208 26<sup>th</sup> Street  
Charleston, West Virginia 25312

and

The West Virginia Department of Environmental Protection  
601 57<sup>th</sup> Street, SE  
Charleston, West Virginia 25304

The facts regarding the remediation response project at this property are:

The approximately 80-acre Copenhaver Park property was acquired by the City of Charleston and operated by a division of the City, the Charleston Sanitary Board (CSB) in 1954. From approximately 1969 to 1994, the CSB disposed of sewage sludge in two impoundments located on the property. Approximately 20.4 acres of the 80-acre parcel are included as the VRRRA site. The two inactive sewage sludge impoundments are contained in the 19.43-acre Area 1, and the Class B compost material is contained in the 0.97-acre Area 2. In 1997, a Consent Order regarding the sludge impoundments was issued to the CSB by the West Virginia Division of Environmental Protection requiring that the CSB monitor the groundwater, analyze the sludge and propose a sludge removal and disposal plan. Actions completed under the VRRRA will allow the use of engineering and institutional controls to control risks to potential receptors at the site.

Groundwater at the site is impacted by pentachlorophenol and arsenic, in excess of the risk-based concentrations for ingestion, inhalation, and adsorption. The subsurface soil in Area 1 of the Upper Sludge Impoundment is impacted by: lead in excess of its residential and industrial risk-based concentrations for ingestion, inhalation, and absorption; Aroclor 1260 in excess of its residential risk-based concentration for ingestion, inhalation, absorption, and migration to groundwater; and toluene in excess of its volatilization to indoor air and migration to groundwater.

Residential exposure assumptions were used to comply with a site-specific remediation standard under the Voluntary Remediation and Redevelopment Act.

This Land Use Covenant prohibits the extraction and use of groundwater at Area 1 and Area 2 (with the exception of use for groundwater monitoring purposes) and provides an effective remedy to the risks posed by pentachlorophenol and arsenic in the groundwater by severing the exposure pathway between receptors and groundwater.

This covenant also restricts soil excavations in the Upper Sludge Impoundment in Area 1 and requires a Health and Safety Plan for such activities. These restrictions and requirements provide an effective remedy for potential exposure to lead, toluene, and Aroclor 1260 by controlling the exposure pathway between receptors and impacted soils at the property. This covenant also requires that structures erected within the Upper Sludge Impoundment of Area 1 be engineered to abate the potential risks from the volatilization of organic compounds to indoor air.

The Final Report for the property did not address geotechnical stability issues associated with the Upper and Lower Sludge Impoundments in Area 1 of the Site. The Certificate of Completion issued for the property addresses environmental impacts only.

The owner of the property shall provide written notice to the Secretary of the Department of Environmental Protection within 10 days following transfer of a specified interest in the property subject to this covenant, changes in use of the property, application for building permits regarding the property, or proposals for any site work affecting the contamination on the property.

The owner(s) shall conduct inspections of the property to monitor compliance with this Land Use Covenant at least once per year, and shall submit two (2) signed copies of the inspection monitoring report to the WVDEP, DLR headquarters in Charleston, within thirty (30) days of the inspection.

This covenant relieves the City of Charleston and the Charleston Sanitary Board and their subsequent successors and assigns from all civil liability to the state as provided under West Virginia Code Article 22 of Chapter 22 and shall remain in effect so long as the property complies with the applicable standards in effect at the time this covenant was issued.

This 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 County 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.

The administrative record for the environmental response project reflected in this covenant is maintained in the files of the West Virginia Department of Environmental Protection, 601 57<sup>th</sup> Street, SE, Charleston, West Virginia, 25304 and is entitled

CHARLESTON SANITARY BOARD  
COPENHAVER PARK SITE  
CHARLESTON, KANAWHA COUNTY, WEST VIRGINIA  
WVDEP VRP #05761

The West Virginia Department of Environmental Protection is granted full right of access to the property for the purpose of implementation or enforcement of this covenant.

All restrictions and other requirements described in this covenant shall run with the land and shall be binding upon all holders and their grantees, lessees, authorized agents, employees or persons acting under their direction or control.

IN WITNESS WHEREOF, the following holders have executed this covenant on the dates indicated.

SIGNED:

[Signature]  
 City of Charleston Mayor

[Signature]  
 Secretary, Department of Environmental Protection

[Signature]  
 Charleston Sanitary Board  
 GEN'L MGR

I, Kristin C Keene, a Notary Public in and for the County of Kanawha, State of West Virginia, do hereby certify that Danny Jones, Mayor, whose name is signed to the writing above, has this day executed this document in my presence or this day acknowledged same to be the true act and deed of said holder.

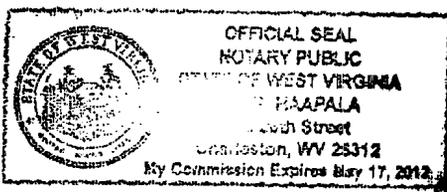
Given under my hand this the 26<sup>th</sup> day of February, 2009.  
 My commission expires July 28, 2018.



Kristin C Keene  
 Notary Public

I, Tina G. Haapala, a Notary Public in and for the County of Kanawha, State of West Virginia, do hereby certify that Larry L. Roller, whose name is signed to the writing above, has this day executed this document in my presence or this day acknowledged same to be the true act and deed of said holder.

Given under my hand this the 26<sup>th</sup> day of February, 2009.  
 My commission expires May 17, 2012.



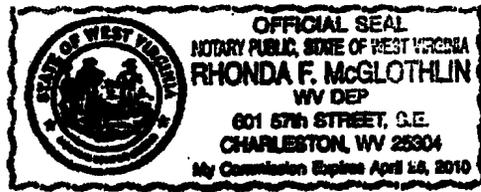
[Signature]  
 Notary Public

Rhonda F. McGlothlin, a Notary Public in and for the County of Kanawha, State of West Virginia, do hereby certify that Ken Ellison, whose name is signed to the writing above, has this day executed this document in my presence or this day acknowledged same to be the true act and deed of said holder.

Given under my hand this the 31<sup>st</sup> day of March, 2009.  
My commission expires April 26, 2010

Rhonda F. McGlothlin  
Notary Public

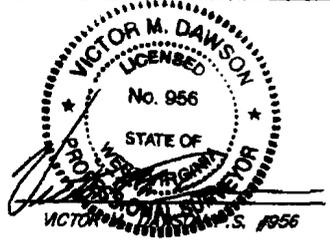
The Clerk will return the recorded document to:  
Mr. Ken Ellison, Director  
WVDEP, DLR  
601 57<sup>th</sup> Street  
Charleston, WV 25304



This instrument was presented to the Clerk of the County Commission of Kanawha County, West Virginia, on **APR 7 2009** and the same is admitted to record.

Teste: Dana J. McComick Clerk  
Kanawha County Commission

MAP SHOWING  
 CHARLESTON SANITARY BOARD  
 VOLUNTARY REMEDIATION AND  
 REDEVELOPMENT ACT SITES  
 SHOWING AREA 1 AND AREA 2  
 WITH UPPER SLUDGE IMPOUNDMENT DELINEATION  
 LOCATED IN THE CITY OF CHARLESTON  
 WEST VIRGINIA



XREF File: MACE File: 00 Charleston North Corp Index 2.LIF  
 File: \\Vary\03-0191-COPENHAWER PARK\JUN-08\PLAT-2-2B-08A.dwg  
 PLOT Date: Time: May 16, 2008 - 1:41pm  
 Plotted By: Vidorwen



**Potesta & Associates, Inc.**  
 ENGINEERS AND ENVIRONMENTAL CONSULTANTS  
 7012 MacCorricle Ave. SE, Charleston, WV 25304  
 TEL: (304) 342-1400 FAX: (304) 343-9031  
 E-Mail Address: potesta@potesta.com

Project  
**CHARLESTON SANITARY BOARD  
 VOLUNTARY REMEDIATION AND  
 REDEVELOPMENT ACT SITES**

Scale 1"=100'	Dwg. No.
Date MAY-08	FIGURE 1