



west virginia department of environmental protection

Division of Land Restoration
601 57th Street SE
Charleston, WV 25304
(304) 926-0455

Joe Manchin III, Governor
Stephanie R. Timmermeyer, Cabinet Secretary
www.wvdep.org

November 5, 2007

Attn: Brad Tiller
Kanawha River Terminals, Inc.
P.O. Box 308
Ceredo, WV 25507

Via courier

RE: Land Use Covenant for Kanawha River Terminals
Ceredo, Wayne County County, VRP # # 06611

Dear Mr. Tiller:

Enclosed please find the signed and notarized Land Use Covenant for the subject parcel.

Please make arrangements to have the land use covenant properly recorded with the Wayne County Clerk, and request the Clerk to return a copy of the recorded instrument to my attention:

Mr. Ken Ellison, Director
WVDEP, Division of Land Restoration
601 57th Street
Charleston, WV 25304

The Land Use Covenant will become a part of the Certificate of Completion to be issued for the subject site, once the Final Report is completed and approved..

Thank you for your attention to this matter, and please feel free to contact Assistant Director Don Martin (304-924-6211) or me if you have any questions.

Sincerely,

Ken Ellison
Director

Enclosure

Cc: Charleston File VRRP # 06611
Andrew Robinson, Project Manager
Don Martin

LAND USE COVENANT

Kanawha River Terminals, Inc. (hereinafter "KRT") 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 100 Main Street & River Front in the City of Ceredo, Ceredo Independent District, Wayne County, West Virginia and more particularly described in a deed of record in the office of the Clerk of the County Commission of Wayne County, West Virginia (at Deed Book 565, page 23 dated June 24, 1994). Paragraph 75 of the Agreement requires KRT, as the owner of said property, to file a Land Use Covenant with the Clerk of the Wayne 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 Wayne 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 KRT, hereinafter referred to as "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.

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

- A. Non-residential uses only for that portion of the property designated as the "VRP Application Site Area and Proposed Non-Residential Land Use Restriction Area" on Figure 1 (attached hereto as Exhibit A); and
- B. Groundwater within the property designated as the "Proposed Groundwater Use Restriction Area" on Figure 1 (Exhibit A), the larger area including those portions of the property from the southern boundary of the application area (i.e., approximately 150 feet north of A Street) north to the Ohio River and from the east side of Main Street approximately 900 feet east, may not be extracted for any purpose except monitoring.

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 § 22-22-14 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 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.

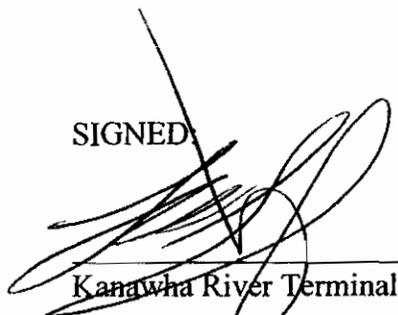
11. This Land Use Covenant shall not be amended, modified or terminated except by written instrument executed by and between the Owner at the time of the proposed amendment, modification or termination, and the Secretary of the West Virginia Department of

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 Wayne 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 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 Secretary of the Department of Environmental Protection have caused this Land Use Covenant to be executed this 3rd day of November, 2007.

SIGNED



Kanawha River Terminals, Inc., Property Owner

By Its (Title): Sr. Vice President

Kim Ellison, Director

Stephanie Timmermeyer
Secretary, West Virginia Department of Environmental Protection

By Authorized Representative (Title): Director

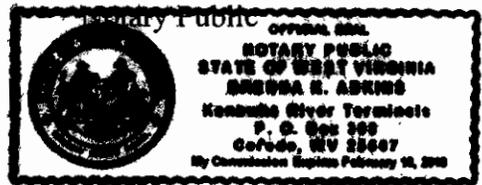
STATE OF WEST VIRGINIA

COUNTY OF Wayne, to -wit:

I, Brenda K. Adkins, a Notary Public in and for the State and County aforesaid, do hereby certify that Leo Smith, whose name is signed to the writing above, bearing date the 15th day of October, 2007, has this day acknowledged same to be his true act and deed.

Given under my hand this the 15th day of October, 2007
My commission expires February 10, 2010.

Brenda K. Adkins



STATE OF WEST VIRGINIA

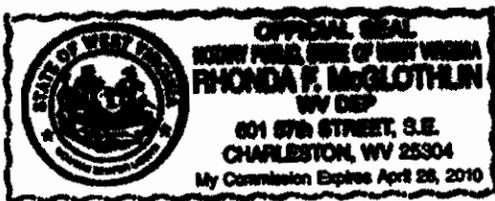
COUNTY OF Kanawha, to -wit:

I, Rhonda F. McGlothlin, 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 5th day of November, 2007, has this day acknowledged same to be his true act and deed.

Given under my hand this the 5th day of November, 2007.
My commission expires April 26, 2010.

Rhonda F. McGlothlin

Notary Public



This instrument was prepared by Christopher Power, Esq., Dinsmore & Shohl, LLP, 900 Lee Street, Huntington Square, Suite 600, Charleston, West Virginia 25301.

****Attention Wayne County Clerk:** Please return this document upon recordation to the Secretary of the Department of Environmental Protection, 601 57th Street, Charleston, WV 25304.

EXHIBIT A

