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west virginia department of environmental protection

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

Joe Manchin III, Governor  
Randy C. Huffinan, Cabinet Secretary  
[www.wvdep.org](http://www.wvdep.org)

August 24, 2010

Mr. Larry Sweeney  
Project Manager  
Delta Consultants  
565 Allegheny Avenue  
Suite 100  
Oakmont, PA 15139

Certified mail # 91 7108 2133 3936 2979 6045

RE: Land Use Covenant for former Glendale Ashland Inc., site  
201 South Park Street, Glen Dale, Marshall County, VRP # 07813

Dear Mr. Sweeney:

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 Marshall 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 57<sup>th</sup> 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 (304-926-0499, ext. 1275) or me if you have any questions.

Sincerely,

Ken Ellison  
Director

Enclosure

C: Jim Gaston, Project Manager  
Don Martin  
file

## 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:

201 South Park Street  
Glen Dale, Marshall County, West Virginia

and more particularly described in Exhibit A, which is attached hereto and incorporated into this Land Use Covenant, along with a Site Map depicting the approximate property boundary.

This Land Use Covenant supersedes a previous covenant associated with this parcel that was recorded by the Clerk of Marshall County on November 18, 2009 in Book 0688, Page 0638.

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:

- *“Residential” use as defined in §22-22-2, which excludes the use for schools, day care centers, nursing homes, or other residential-style facilities or recreation areas.*
- *Construction of subsurface structures (other than building footers).*

The current owner of record of the property, and the contact information solely for the purposes of this Land Use Covenant:

*Ashland Inc.  
5200 Blazer Parkway  
Dublin, Ohio 43017  
Attn: Michael B. Dever  
Phone: 614/790-1586*

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:

- Ashland Inc. (Owner; contact info above)
- B.F.S. Petroleum Products, Inc. (Lessee)  
*1768 Mileground Road  
Morgantown, WV 26505  
Attn: Howard Goodstein  
Phone: 304/291-6980*

The facts regarding the remediation response project at this property are: *The property has been used as a petroleum products storage and distribution facility since at least 1952, when Ashland Inc. acquired an existing petroleum operation on this property. A risk assessment was conducted using industrial land use conditions, and found that no detected concentrations in any potential exposure media (soil, soil vapor, and groundwater) exceeded the screening levels. However, soil impacts have been discovered in the vicinity of the loading rack and the underground storage tanks (USTs). Impacted soils were noted in soil samples at various depths at sampling locations in the vicinity of the USTs and loading rack, and in the truck parking area immediately north of the on-site building.*

*Contaminants of concern in soil are benzene, toluene, ethylbenzene, total petroleum hydrocarbons diesel range organics, total petroleum hydrocarbons gasoline range organics, and methyl-tert-butyl ether. Sources of these materials may potentially include tank overfills, spills or leaks during truck loading, leakage from delivery trucks, and other small-quantity releases incurred during daily operations of the terminal. Groundwater, which is present approximately 40 feet beneath the site, has not shown the presence of petroleum-related contaminants.*

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 the 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 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 applicant and 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 in accordance with W. Va. Code §22-22B-10, by and between the Owner at the time of the proposed amendment, modification or termination, the Secretary of the West Virginia Department of Environmental Protection, and the holders of this covenant. 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 Marshall 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 the covenant is maintained in the main office of the West Virginia Department of Environmental Protection; 601 57<sup>th</sup> Street Southeast; Charleston, West Virginia 25304 and is entitled "Ashland – Glendale VRP Site # 07813".

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 holder has executed this covenant on the date indicated.

**ASHLAND INC.**

*JMF* SIGNED: Kimberly Czar  
Printed: Kimberly Czar

DATE: 4/27/10

I Joyce L. Mays, A Notary Public in and for the County of Fayette, Commonwealth of Kentucky, do hereby certify that the holder(s) whose (name is) (names are) signed above, this day executed this document in my presence on this day and acknowledged same to be the true act and deed of said holder(s).

Joyce L. Mays  
Notary Public  
Joyce L. Mays  
My Commission Expires August 19, 2012

IN WITNESS WHEREOF, the following holder has executed this covenant on the date indicated.

**B.F.S. PETROLEUM PRODUCTS, INC.**

SIGNED: Marlene Popish

DATE: 5-19-10

Printed: Marlene Popish

I Marlene Popish, A Notary Public in and for the County of Monongalia, State of West Virginia, do hereby certify that the holder(s) whose (name is) (names are) signed above, this day executed this document in my presence on this day and acknowledged same to be the true act and deed of said holder(s).

Marlene Popish  
Notary Public



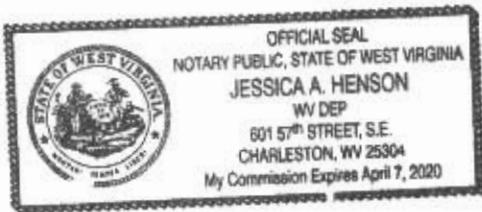
IN WITNESS WHEREOF, the following agency has executed this covenant on the date indicated.

**WEST VIRGINIA DEPARTMENT OF ENVIRONMENTAL PROTECTION**

SIGNED: Ken Ellison  
Printed: Ken Ellison

DATE: 8/24/10

I Jessica A. Henson, A Notary Public in and for the County of Kanawha, State of West Virginia, do hereby certify that the agency whose (name is) (names are) signed above, this day executed this document in my presence on this day and acknowledged same to be the true act and deed of said holder(s).



Jessica A. Henson  
Notary Public

## **EXHIBIT A**

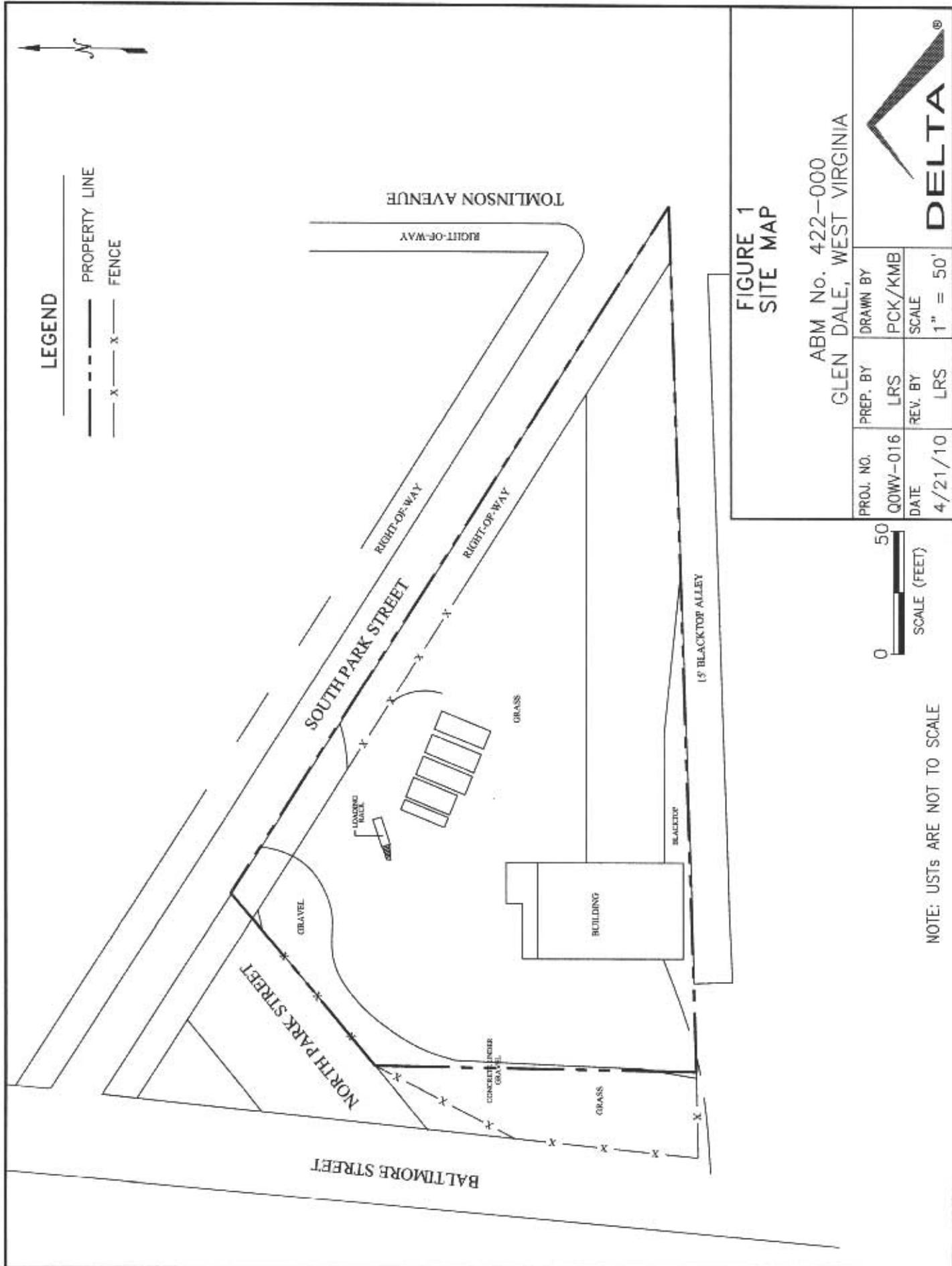
### **Legal Description**

A certain piece or parcel of land situated in Glen Dale, Marshall County, West Virginia, known and designated as Lot 55, Division 2 on the plat of Glen Dale, said plat being of record in the Office of the Clerk of the County Court of Marshall County, West Virginia, in Deed Book 37, Page 600, together with all and singular, the improvements thereon and the appurtenance belonging thereto.



**LEGEND**

- — — — — PROPERTY LINE
- — — — — FENCE



**FIGURE 1  
SITE MAP**

ABM No. 422-000  
GLEN DALE, WEST VIRGINIA

PROJ. NO.	PREP. BY	DRAWN BY
Q0WV-016	LRs	PCK/KMB
DATE	REV. BY	SCALE
4/21/10	LRs	1" = 50'



NOTE: USTs ARE NOT TO SCALE

