

LAW OFFICES

**BALLARD SPAHR ANDREWS & INGERSOLL, LLP**

102 PICKERING WAY, SUITE 200  
EXTON, PENNSYLVANIA 19341  
WWW.BALLARDSPAHR.COM

PHILADELPHIA, PA  
BALTIMORE, MD  
BETHESDA, MD  
DENVER, CO  
LAS VEGAS, NV  
PHOENIX, AZ  
SALT LAKE CITY, UT  
VOORHEES, NJ  
WASHINGTON, DC  
WILMINGTON, DE

JOHN C. LAAGER  
DIRECT DIAL: 484-875-3021  
PERSONAL FAX: 215-864-9118  
LAAGERJ@BALLARDSPAHR.COM

July 10, 2009

Ken Ellison, Director  
West Virginia Department of Environmental Protection  
601 57<sup>th</sup> Street SE  
Charleston, WV 25304



Re: Land Use Covenant for Jim's Auto Service  
2834 Chapline Street, Wheeling, Ohio County, VRP # 08036

Dear Mr. Ellison,

As requested in your letter dated June 8, 2009 to Kevin Endriss of Atlantic Richfield Company, I am enclosing a copy of the Land Use Covenant for the above site that has been recorded in Ohio County.

Please let me know if you have any questions.

Sincerely,

John C. Laager

cc: Jessica Gonzalez, Esq., with original  
Kevin Endriss  
Jennifer Menges

**CORPORATION SERVICE COMPANY**  
www.cscglobal.com

CSC- Wilmington  
Suite 400  
2711 Centerville Road  
Wilmington, DE 19808  
800-927-9800  
302-636-5454 (Fax)

**Matter#** WV OHIO COUNTY  
**Project Id :**  
**Additional Reference :** NOT PROVIDED

**Order#** 049687-1  
**Order Date** 06/26/2009

**Entity Name :** ATLANTIC RICHFIELD COMPANY SCHMIDT RANDALL B.  
(Grantee)/ SCHMIDT BROTHERS INC. (Grantor)

**Jurisdiction :** WV-OHIO COUNTY

**Request for :** UCC Filing  
**File Type :** DEED FILING

**Result :** Filed

**File Number :** 1853755  
**Filing Date :** 07/01/2009  
**Book Number :** 794-594

Ordered by TAMMY LOUGHERY at BALLARD SPAHR ANDREWS & INGERSOLL, LLP

Thank you for using CSC. For real-time 24 hour access to the status of any order placed with CSC, access our website at [www.cscglobal.com](http://www.cscglobal.com).

If you have any questions concerning this order or CSCGlobal, please feel free to contact us.

Tracy Manganelli  
[tmangane@cscinfo.com](mailto:tmangane@cscinfo.com)

The responsibility for verification of the files and determination of the information therein lies with the filing officer; we accept no liability for errors or omissions.

**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:

*(Parcel 1) BEGINNING at a cross cut in the concrete sidewalk in the easterly line of Chapline Street, said beginning cross being located N. 6° 00' E. 10 and 9/10 feet from a cross at the intersection of said easterly line of Chapline Street with said northerly line of 29<sup>th</sup> Street; thence from said beginning cross and with said easterly line of Chapline Street, the following 3 bearings and distances: N. 6° 00' E. 38 and 55/100 feet to a cross; thence N. 84° 00' W. 85/100 of a foot to a cross; thence N. 6° 00' E. 100 and 21/100 feet to a said copperweld marker; thence leaving said easterly line of Chapline Street and with the division line between the property herein described and the property now or formerly owned by McCurdy Memorial Inc., S. 83° 51' E. 100 feet to a cross cut in the face of a footer in the westerly line of Lane D; thence with said westerly line, S. 6° 00' W. 144 and 99/100 feet to a cross cut in the concrete sidewalk in said northerly line N. 86° 33' W. 88 and 35/100 feet to a cross cut in said concrete sidewalk; thence N. 40° 16' W. 15 and 7/100 feet to the place of BEGINNING.*

*Said area being recorded in the office of the Clerk of the Ohio County Commission Deed Book 683, page 649.*

*(Parcel 2) AND including a 120' portion of a 14' right-of-way known as Lane D located adjacent to part of Lot 6 and all of Lot 7 & 8 in square numbered 12 as shown on the Platt of Caldwell's Addition.*

*Said area being recorded in the office of the Clerk of the Ohio County Commission Deed Book 760, page 353.*

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:

*Extraction of groundwater for any use except remediation and monitoring  
Residential and/or agricultural uses and purposes*

The current owners of record of the property, and their contact information, are:

*Randall B. Schmidt, President  
Schmidt Brothers Inc  
2833 Eoff Street  
Wheeling, WV 26003*

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:

*Atlantic Richfield Company  
1 West Pennsylvania Avenue, Suite 440  
Towson, MD 21204*

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

*Residual petroleum hydrocarbons are present in soil and groundwater at the site and are made up of BTEX compounds and SVOCs. Subsurface soil samples were collected at the site from 1997 through 2007. The historical data were compared to WVDEP De Minimis Cleanup Levels for Industrial Soils and none of the constituents were detected above the standards. Groundwater investigations were performed at the site from 1997 through 2008. A portable remediation system operated at the site from February 2005 until March 27, 2006. During operation of the system approximately 4,673 pounds of TPH (C1-C10 range) were recovered by SVE and approximately 0.1 pounds of TPH was recovered from groundwater. The concentrations of constituents in groundwater following removal of the remediation system were compared to De Minimis standards except for benzene and naphthalene. Site-specific Cleanup Levels were calculated for benzene and naphthalene and residual concentrations were determined to be protective of human health under current and future non-residential land uses according to the site-specific Human Health Risk Assessment (HHRA). Groundwater data evaluated for use in the HHRA were collected from OW-4 and OW-5, which contained the highest concentrations of residual petroleum hydrocarbons on the site. The two potential routes of exposure were determined to be (1) inhalation of hydrocarbons in groundwater via volatilization through the vadose zone to indoor air for onsite commercial/industrial workers, and (2) inhalation of hydrocarbons in groundwater via volatilization through the vadose zone to ambient air for onsite commercial/industrial workers. The current and future intended use for the site is commercial and involves the sale of gasoline and diesel as a retail service station.*

The owner(s) 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.

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 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.

Schmidt Brothers Inc. shall conduct inspections of the property to monitor compliance with this Land Use Covenant at least 1 time 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.

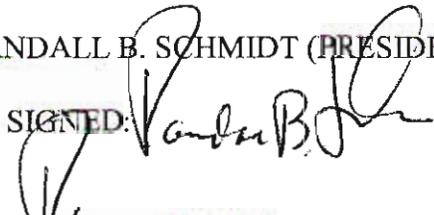
The administrative record for the environmental response project reflected in this covenant is maintained in the WVDEP, Division of Land Restoration, 601 57<sup>th</sup> Street, Charleston, WV 25304 and is entitled Jim's Auto Service, Atlantic Richfield Company, VRP # 08036, 2834 Chapline Street, Wheeling.

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.

RANDALL B. SCHMIDT (PRESIDENT) FOR SCHMIDT BROTHERS INC.

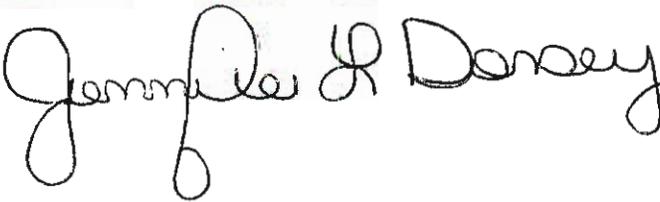
SIGNED: 

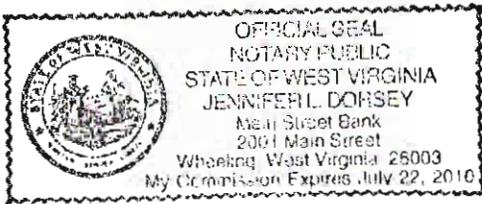
Date: 5-12-09

I, JENNIFER L DORSEY, a Notary Public in and for the County of OHIO, State of WEST VIRGINIA, do hereby certify that the holder whose name is signed above, 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 12 day of MAY, 2009.

Notary Public





Jim's Auto Service  
VRA # 08036

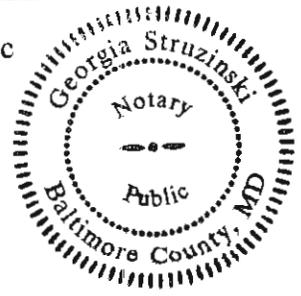
KEVIN ENDRISS (ENVIRONMENTAL BUSINESS MANAGER) ON BEHALF OF ATLANTIC RICHFIELD COMPANY

SIGNED: Kerry Evelin Date: 5/11/09

I, Georgia Struzinski, a Notary Public in and for the County of Baltimore, State of Maryland, do hereby certify that the holder whose name is signed above, 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 11<sup>th</sup> day of May, 2009.

Notary Public



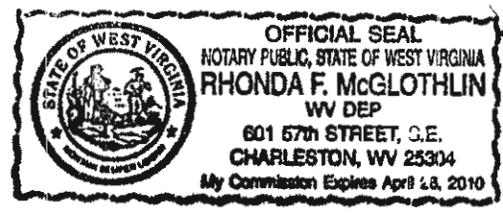
WEST VIRGINIA DEPARTMENT OF ENVIRONMENTAL PROTECTION

SIGNED: Ku Evelin Date: 6/9/09

I, Rhonda F. McGlothlin, a Notary Public in and for the County of Kanawha, State of West Virginia, do hereby certify that the holder whose name is signed above, 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 9<sup>th</sup> day of June, 2009.

Notary Public



Rhonda F. McGlothlin

