

LAND USE COVENANT

CABELL COUNTY CLERK
COVENANT
Clerk 18
Date/Time: 03/26/2010 14:46
Inst #: 328539
Book/Page: 361- / 692-
Recor Tag: 18.00
.00

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 of, the following described property:

The site consists of the area more particularly described in the document attached as **Exhibit A** and depicted in the drawing attached as **Exhibit B** (hereinafter referred to as "the Site"). The Site is located at approximately 38°24'34" Latitude 82°18'19" Longitude and is situated north of Peyton Street in Barboursville, Cabell County, West Virginia. The Site consists of approximately 19.825 acres, more or less, particularly described in the following deed of record: Deed Book No. 1018, Page 749 recorded in the office of the Clerk of the County Commission of Cabell 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) Excavation, drilling or penetration unless such excavation, drilling or penetration is conducted by a contractor who is qualified and knowledgeable about releases and exposures 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 a Licensed Remediation Specialist or similarly qualified individual. The contractor will also be required to remediate the disturbed area in a manner which assures that an equivalent amount of engineering control of the site is achieved at the conclusion of the work. The Owner shall provide written notice to the Secretary of the Department of Environmental Protection of the intent to conduct such work.
- b) Extraction of groundwater for any use except groundwater monitoring.
- c) Any residential use as defined in W.Va. Code §22-22-2(bb), including but not limited to use of the property to house a school, day care center, nursing home, or other residential style facility.
- d) Construction of all future on-site structures will be slab-on-grade with passive sub-slab ventilation systems and vapor barriers to provide adequate protection from any possible vapor movement.
- e) Construction of enclosed buildings or structures built to be inhabited, in the area of the former underground storage tank (UST) system. The area of the former UST system is defined by the area bound by the following four coordinates:

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

- o 38° 24' 32.521" North, 82° 18' 16.528" West;
- o 38° 24' 33.844" North, 82° 18' 16.086" West;
- o 38° 24' 33.272" North, 82° 18' 14.739" West; and
- o 38° 24' 32.218" North, 82° 18' 15.292" West;

A Site Drawing depicting the areas subject to restriction and the associated restriction is provided in the Land Use Covenant as **Exhibit B**.

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

Village of Barboursville
721 Central Avenue
P.O. Box 266
Barboursville, WV 25504

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:

Village of Barboursville
721 Central Avenue
P.O. Box 266
Barboursville, WV 25504

The facts regarding remediation response project at this property – VRP #08170 – are:

Contaminants of concern (COCs) were detected in several media at the Site (see attached Tables 1 and 2 for specific COCs in soil and groundwater, respectively). The COCs detected in the on-site soils were volatile organic compounds ("VOCs"), and semi-volatile organic compounds ("SVOCs"). The COCs detected in the on-site groundwater were VOCs, SVOCs and metals. Exposure pathways identified for these COCs include direct contact, incidental ingestion and vapor inhalation. These exposure pathways were addressed by implementing this Land Use Covenant.

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 shall conduct an inspection of the property to monitor compliance with this Land Use Covenant at least one 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. The inspection required by this paragraph shall occur during the third quarter of the calendar year.

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 Cabell 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 West Virginia Department of Environmental Protection, Division of Land Restoration, and is entitled:

VILLAGE OF BARBOURSVILLE
FORMER BARBOURSVILLE BRICKYARD
BARBOURSVILLE, CABELL COUNTY, WEST VIRGINIA
WVDEP VRP #08170

and located along Peyton Street, Barboursville, West Virginia.

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.

CABELL COUNTY CLERK
COVENANT Clerk 18
Date/Time: 03/26/2010 14:46
Inst #: 328539
Book/Page: 361- / 69-
Recd./Tax: 18.00 .00

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

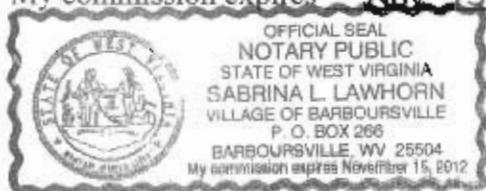
SIGNED: Paul Torman, SR
Mayor, Village of Barboursville

Ken Ellison, Director
Secretary, Department of Environmental Protection

I, SABRINA L. LAWHORN, a Notary Public in and for the County of CABELL, State of WEST VIRGINIA, do hereby certify that PAUL C. TORMAN, SR. 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 the 1 day of MARCH 2010.

My commission expires Nov 15, 2013.



Sabrina L. Lawhorn
Notary Public

I, Rhonda F. McGlothlin, a Notary Public in and for the County of Kanawha, State of West Virginia, do hereby certify that Ken Ellison, Director, 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 22nd day of March, 2010.

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 57th Street
Charleston, WV 25304

CABELL COUNTY CLERK
COVENANT Clerk 18
Date/Time: 03/26/2010 14:46
Inst #: 328339
Book/Page: 361- / 695-
Recd/Tax: 18.00 .00

Table 1
Soil - Contaminants of Concern
Former Barboursville Brickyard
Barboursville, West Virginia

Volatile Organic Compounds
1,2,4-Trimethylbenzene
1,3,5-Trimethylbenzene
Benzene
Toluene
Ethylbenzene
Semivolatile Organic Compounds
Benzo(a)pyrene
Dibenz(a,h)anthracene

Table 2
Groundwater - Contaminants of Concern
Former Barboursville Brickyard
Barboursville, West Virginia

Volatile Organic Compounds
Bromodichloromethane
Chloroform
Semivolatile Organic Compounds
Bis(2-ethylhexyl)phthalate (DEHP)
Metals
Arsenic
Iron
Manganese
Lead

CARROLL COUNTY CLERK
 COURT REPORTER
 Date/Time: 03/26/2010 14:46
 Inst #: 328539
 Book/Page: 361- / 696-
 Recd/Tax: 18.00 .00

EXHIBIT A

19.825 ACRE TRACT
FORMER BARBOURSVILLE BRICKYARD

CABELL COUNTY CLERK
COMENANT Clerk 18
Date/Time: 03/26/2010 14:46
Inst #: 328539
Book/Page: 361 - / 697 -
Recd/Tax: 18.00 .00

LEGAL DESCRIPTION OF SURVEY MADE FOR THE VILLAGE OF BARBOURSVILLE OF THE PROPERTY KNOWN AS THE BARBOURSVILLE BRICKYARD

All that certain lot, piece, or parcel of land situate in the Village of Barboursville, Cabell County, West Virginia, on the waters of the Guyandotte River, and is located near Industrial Road in said Village of Barboursville, approximately 2,300 east of its intersection with State Local Service Route 31/01 (Peyton Street), and being more particularly described as follows:

Beginning at the low water mark of the Guyandotte River, at the northwest corner of Thomas L. and Sheila F. Ball (deed book 1119 page 20);

Thence leaving said Guyandotte River and with said Ball, South 07 degrees 20 minutes 48 seconds West, passing a 5/8 inch by 32 inch rebar with plastic cap labeled "D. Porter H&T PLS 357" (set) at 95.54 feet, a 5/8 inch by 32 inch rebar with plastic cap labeled "D. Porter H&T PLS 357" (set) at 244.00 feet, a total distance of 459.48 feet to a 5/8 inch by 32 inch rebar with plastic cap labeled "D. Porter H&T PLS 357" (set) in the northerly line of the CSX Railroad Right of Way, at the southwest corner of John J. and Marianne K. deBarbadillo (deed book 854 page 20);

Thence leaving said deBarbadillo, and with said railroad right of way, North 74 degrees 28 minutes 52 seconds West, a distance of 41.59 feet;

Thence North 74 degrees 26 minutes 52 seconds West, a distance of 99.78 feet to a 5/8 inch by 32 inch rebar with plastic cap labeled "D. Porter H&T PLS 357" (set);

Thence South 15 degrees 33 minutes 08 seconds West, a distance of 75.00 feet to a 5/8 inch by 32 inch rebar with plastic cap labeled "D. Porter H&T PLS 357" (set);

Thence North 74 degrees 28 minutes 52 seconds West, passing a 5/8 inch by 32 inch rebar with plastic cap labeled "D. Porter H&T PLS 357" (set) at 430.66 feet, a total distance of 1,133.05 feet to a 5/8 inch by 32 inch rebar with plastic cap labeled "D. Porter H&T PLS 357" (set) at the southeast corner of R. B. C. Development, L.P. (deed book 1114 page 297);

Thence leaving said railroad right of way and with said R. B. C. Development, L.P., North 07 degrees 53 minutes 28 seconds West, passing a 5/8 inch rebar found at 11.18 feet, a 5/8 inch by 32 inch rebar with plastic cap labeled "D. Porter H&T PLS 357" (set) at 85.88 feet, a total distance of 96.70 feet to a 5/8 inch rebar (found);

Thence North 33 degrees 39 minutes 05 seconds West, a distance of 65.00 feet to a 5/8 inch by 32 inch rebar with plastic cap labeled "D. Porter H&T PLS 357" (set);

Thence North 31 degrees 18 minutes 04 seconds West, passing a 5/8 inch by 32 inch rebar with plastic cap labeled "D. Porter H&T PLS 357" (set) at 232.29 feet, a 5/8 inch by 32 inch rebar with plastic cap labeled "D. Porter H&T PLS 357" (set) at 402.29 feet, a 5/8 inch by 32 inch rebar with plastic cap labeled "D. Porter H&T PLS 357" (set) at 590.59 feet, a total distance of 624.75 feet to the low water mark of said Guyandotte

CABELL COUNTY CLERK
COURT
Date/Time: 03/26/2010 14:46
Inet #: 328539
Book/Page: 361- / 699-
Recd/Tax: 18.00 .00
Clerk 18

River:

Thence leaving said R.B.C. Development, L.P. and with said Guyandotte River, South 60 degrees 29 minutes 20 seconds East, a distance of 432.32 feet,

Thence South 74 degrees 35 minutes 22 seconds East, a distance of 494.12 feet;

Thence South 68 degrees 15 minutes 00 seconds East, a distance of 831.73 feet the BEGINNING, Containing 19.825 acres, more or less, as shown on the plat of survey prepared by Danny A. Porter, Professional Land Surveyor, WV Registration Number 357, attached hereto and to be recorded as a part of this instrument.

Subject to a 20 foot wide roadway easement along the western boundary of the property described hereon, as shown on said plat of survey attached and to be recorded as a part of this instrument.

Also subject to a flowage easement along the Guyandotte River, to elevation 525.0 in favor of the United States of America.

And being a part of the same land conveyed unto Claude F. Wiseman and Helen Louise Wiseman, Husband and Wife, by Sharon J. Muncy, by deed dated the 23rd day of April 1997, and is of record at deed book 1018 page 749 in the Office of Clerk of the County Court of Cabell County, West Virginia to which reference is hereby made



Danny A. Porter
Danny A. Porter

6-12-06
Date

CABELL COUNTY CLERK
COURT CLERK
Date/Time: 03/26/2010 14:46
Inst #: 328539
Book/Pages: 361- / 699-
Recd/Tax: 18.00 .00

LEGEND	
	1/2" Rebar 32" Long With Orange Plastic Cap Stamped "D" Plus 1/2" Dia
	Monument Found (Size and Type as "Found")
	Tax Map
	Tax Parcel Number

Thomas L. and Sheila F. Ball
Deed Book 1113 Page 20
John J. and Margie K. deBarbado
Deed Book 834 Page 20

Claude F. and Helen Louise Wiseman
Deed Book 1018 Page 749
19.825 Acres

13
5

13
21



Plat Of Survey For
The Village of Barboursville
Showing The Property Known as
The Barboursville Brickyard
City of Barboursville, Cabell County, WV
Scale: 1 Inch = 200 Feet June 12 2008
Surveyed By: Danny A. Porter Reg. Prof.
Surveyor No 357

GRAPHIC SCALE



1 IN FEET
1 inch = 200 ft

H & T Technical Development, Inc.
PO Box 480 Barboursville, WV 26004
Voice: (304) 625-0485 Fax: (304) 716-5017

CABELL COUNTY CLERK
COURT
Date/Time: 03/26/2010 14:46
Inst #: 328539
Book/Page: 361- / 700-
Recd/Tax: 18.00 .00

EXHIBIT B

SITE DRAWING

CABELL COUNTY CLERK
COHENANT Clerk JB
Date/Time: 03/26/2010 14:46
Inst #: 328539
Book/Page: 361- / 701-
Recd/Tax: 18.00 .00

LEGEND

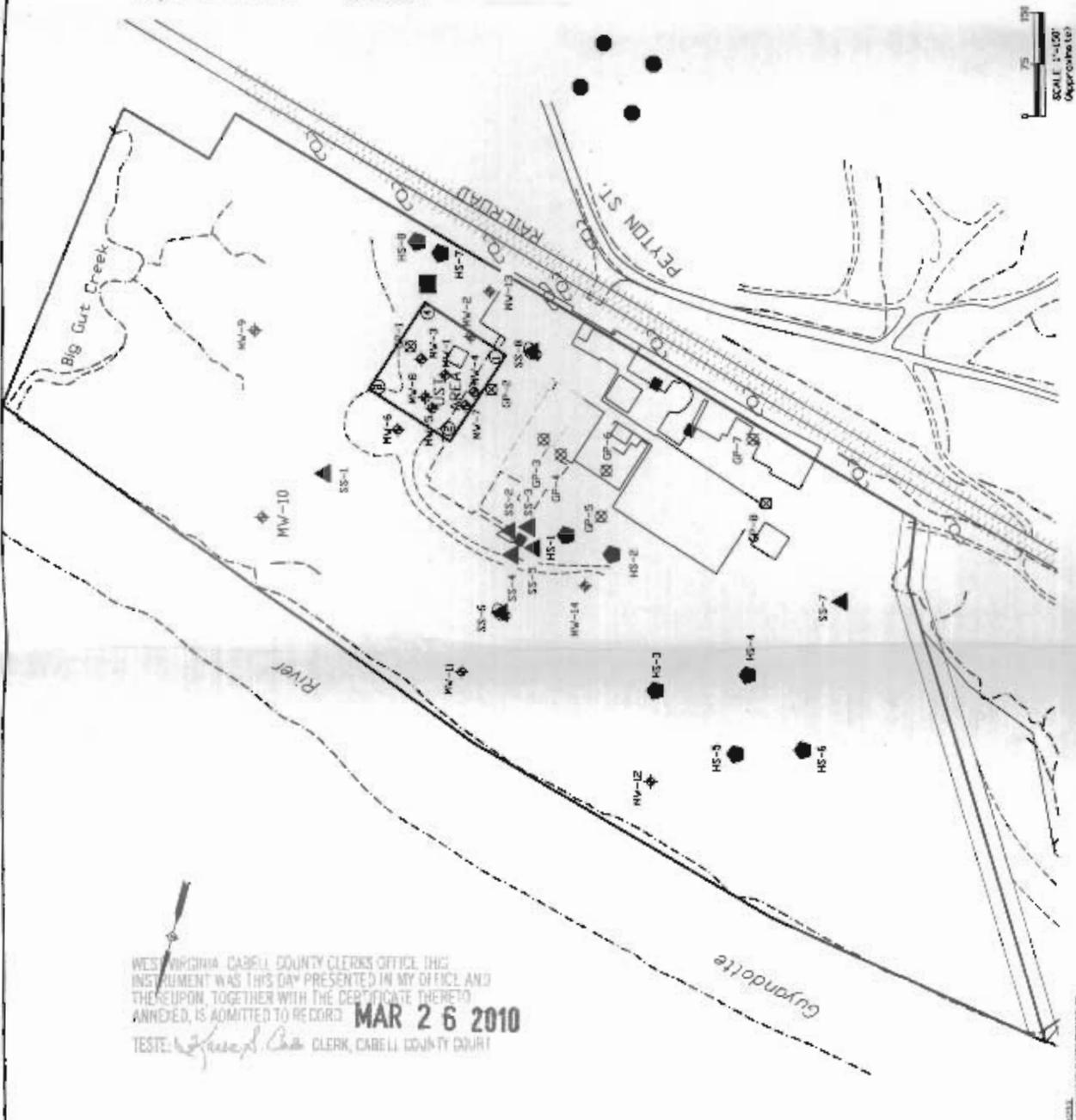
- PROPERTY LINE
- ROADS
- RAILROAD
- UTILITY POLE
- MONITORING WELL
- SURFACE SOIL SAMPLE LOCATIONS
- GEOPROBE BORING LOCATIONS
- WATER GRAB SAMPLE LOCATIONS
- TEST PIT LOCATIONS
- HOLLOW STEM AUGER BORING LOCATIONS
- GPS CORNER LOCATIONS OF FORMER UST SYSTEM

- ① 38° 24' 32.521" North, 82° 18' 16.528" West,
- ② 38° 24' 33.844" North, 82° 18' 16.086" West;
- ③ 38° 24' 33.272" North, 82° 18' 14.739" West; and
- ④ 38° 24' 32.218" North, 82° 18' 15.292" West;

Area with restriction against future building construction or requirement for future structures to be constructed as non-enclosed or non-inhabited structures.

Area within which the following restrictions will be required:

- Prohibition of the use of Site groundwater for any purpose other than environmental monitoring or remediation;
- Restrict future use of the property to non-residential use only.
- Require all future construction/utility workers conducting intrusive activities to use appropriate PPE for workers in the excavation, to review and adhere to a posted site-specific health and safety plan and to only conduct intrusive work under License Remediation Specialist.
- Require all future structures to be constructed slab-on-grade with passive sub-slab ventilation systems or vapor barriers.



 Environmental Resources & Consulting, LLC 6 Coco Road Elkhorn, WV 25071		 KEMRON Environmental Services, Inc. 3 Crossdock Way, Rock Branch Industrial Park Park, WV 25109	
PROJECT NO.	ACAD FILE	DRAWING DATE:	
WV0581-003-001	SITE DRAWING	1/19/10	
DESIGNED BY	SITE DRAWING		
KG	FORMER BARBOURSVILLE BRICKYARD		
DETAILED BY	THE VILLAGE OF BARBOURSVILLE		
MSY	BARBOURSVILLE, WV		
CHECKED BY	CUSTOMER LOCATION:	PROJECT NO.	
C-JA	BARBOURSVILLE, WEST VIRGINIA	1	

WEST VIRGINIA CABELL COUNTY CLERKS OFFICE THIS INSTRUMENT WAS THIS DAY PRESENTED IN MY OFFICE AND THEREUPON, TOGETHER WITH THE CERTIFICATE THEREON ANNEXED, IS ADMITTED TO RECORD. **MAR 26 2010**

TESTE: *Joseph C. ...* CLERK, CABELL COUNTY COURT

CABELL COUNTY CLERK
 COHENANT Clerk 18
 Date/Time: 03/26/2010 14:46
 Inst #: 328539
 Book/Page: 361- / 782-
 Recd/Tax: 18.00 .00