RECEPTION#: 2007000004490,
01/11/2007 at 01:02:50 PM,1 OF 5,
Doc Type:COV
Karen Long, Adams County, CO

This property is subject to an Environmental Covenant held by the Colorado Department of Public Health and Environment pursuant to section 25-15-321, C.R.S.

ENVIRONMENTAL COVENANT

The United States of America acting by and through the Administrator of General Services and pursuant to 40 USC Sec. 545 et seq. grants an Environmental Covenant ("Covenant") this 14 day of November, 2006 to the Hazardous Materials and Waste Management Division of the Colorado Department of Public Health and the Environment ("the Department") pursuant to §25-15-321 of the Colorado Hazardous Waste Act, §25-15-101, *et seq.* The Department's address is 4300 Cherry Creek Drive South, Denver, Colorado 80246-1530.

5
S-3
L-5

WHEREAS, the United States is the owner of certain property commonly referred to as the Former 48th and Holly Landfill, located at 48TH and Holly streets, Commerce City, COLORADO 80216, more particularly described in Attachment A, attached hereto and incorporated herein by reference as though fully set forth (hereinafter referred to as "the Property"); and

WHEREAS, pursuant to Sand Creek Industrial Superfund Site Record of Decision for OU 3 dated June 30, 1993, the Record of Decision for OU4 dated April 7, 1994 and the Record of Decision for OU6, incorporated in the June 30, 1993 Record of Decision for OU3 dated, June 30, 1994, the Property is the subject of enforcement and remedial action pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§ 9601, et seq. ("CERCLA"), and

WHEREAS, the purpose of this Covenant is to ensure protection of human health and the environment by prohibiting use of the Property until production of methane gas from the landfill has dropped to levels protective of any use of the Property or until it can be shown that a development can be made of the landfill and such development will not adversely effect the operation and maintenance of the landfill gas extraction system ("LFGES").

WHEREAS, the United States desires to subject the Property to certain covenants and restrictions as provided in Article 15 of Title 25, Colorado Revised Statutes, which covenants and restrictions shall burden the Property and bind the United States and all parties having any right, title or interest in the Property, or any part thereof, their heirs, successors and assigns, and any persons using the land, as described herein, for the benefit of the Department and the United States Environmental Protection Agency.

NOW, THEREFORE, the United States hereby grants this Environmental Covenant to the Department, with the United States Environmental Protection Agency as a third party beneficiary, and declares that the Property as described in Attachment A shall hereinafter be bound by, held, sold, and conveyed subject to the following requirements set forth in paragraphs 1 through 10, below, which shall run with the Property in perpetuity and be binding on the United States and all parties having any right, title or interest in the Property, or any part thereof, their heirs, successors and assigns, and any persons using the land, as described herein. As used in this Environmental Covenant, the term OWNER means the record owner of the Property and, if any, any other person or entity otherwise legally authorized to make decisions regarding the

X State of Colorado
env. Natural Resources &
Environment
1525 Sherman St. 5th FLR
Denver, CO 80203

12

transfer of the Property or placement of encumbrances on the Property, other than by the exercise of eminent domain.

1) Use restrictions

   Due to the presence of methane gas at levels dangerous to human health and the environment, and to protect the proper functioning of the LFGES, no activity of any kind is allowed on the Property, other than remedial activities approved by the U.S. EPA, and no use shall be made of the Property, until this Covenant is modified in accordance with paragraph 2, below.

2) Modifications This Covenant runs with the land and is perpetual, unless modified or terminated pursuant to this paragraph. OWNER may request that the Department approve a modification or termination of the Covenant. The request shall contain information showing that the proposed modification or termination shall, if implemented, ensure protection of human health and the environment. The Department shall review any submitted information, and may request additional information. If the Department determines that the proposal to modify or terminate the Covenant will ensure protection of human health and the environment, it shall approve the proposal. No modification or termination of this Covenant shall be effective unless the Department has approved such modification or termination in writing. Information to support a request for modification or termination may include one or more of the following:

   a) a proposal to perform additional remedial work;
   b) new information regarding the risks posed by the residual contamination;
   c) information demonstrating that residual contamination has diminished;
   d) information demonstrating that an engineered feature or structure is no longer necessary;
   e) information demonstrating that the proposed modification would not adversely impact the remedy and is protective of human health and the environment; and
   f) other appropriate supporting information.

3) Conveyances OWNER shall notify the Department at least fifteen (15) days in advance of any proposed grant, transfer or conveyance of any interest in any or all of the Property.

4) Notice to Lessees OWNER agrees to incorporate either in full or by reference the restrictions of this Covenant in any leases, licenses, or other instruments granting a right to use the Property.

5) Notification for proposed construction and land use OWNER shall notify the Department simultaneously when submitting any application to a local government for a building permit or change in land use.

6) Inspections The Department shall have the right of entry to the Property at reasonable times with prior notice for the purpose of determining compliance with the terms of this Covenant. Nothing in this Covenant shall impair any other authority the Department may otherwise have to enter and inspect the Property.

7) No Liability The Department does not acquire any liability under State law by virtue of accepting this Covenant, nor does any other named beneficiary of this Covenant acquire any liability under State law by virtue of being such a beneficiary.

8) Enforcement The Department may enforce the terms of this Covenant pursuant to §25-15-322. C.R.S. The United States and, any named beneficiaries of this Covenant may file suit in district court to enjoin actual or threatened violations of this Covenant.

9) Owner's Compliance Certification OWNER shall execute and return a certification form provided by the Department, on an annual basis, detailing OWNER's compliance, and any lack of compliance, with the terms of this Covenant.

10) Notices Any document or communication required under this Covenant shall be sent or directed to:

Superfund PA / SI Unit Leader
Hazardous Materials and Waste Management Division
Colorado Department of Public Health and the Environment
4300 Cherry Creek Drive South
Denver, Colorado 80246-1530

Remedial Project Manager
Sand Creek NPL Site
Mail Code: 8EPR-SR
U.S. Environmental Protection Agency,
Region 8
999 18th Street, Suite 300
Denver, Colorado 80202

The United States of America acting by and through the Administrator of General Services, has caused this instrument to be executed this 14 day of November, 2006.

By: James Ferracci, Director
U.S. General Services Administration
Real Property Disposal Division 7PR

THE STATE OF TEXAS)(

COUNTY OF TARRANT)(

BEFORE ME, a Notary Public in and for the State of Texas, on this day personally appeared JAMES L. FERRACCI, known to me to be the person whose name is subscribed to the foregoing Environmental Covenant, and known to me to be the Director, Real Property Disposal, Greater Southwest Region, General Services Administration, Fort Worth,

Texas, and acknowledged to me that the same was the act and deed of the United States of America and of the Administrator of General Services and that he executed the same as the voluntary act of the United States of America and of the Administrator of General Services for the purposes and consideration therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE at Fort Worth, Texas, this 14th day of November, 2006.

Terry L. Kircher

Notary Public, State of Texas
Print Name:
My Commission expires: _

NOTARY PUBLIC STATE OF TEXAS
Terry L Kircher
My Commission Expires
April 12, 2008

Accepted by the Colorado Department of Public Health and Environment this 11th day of December, 2006.

By: Gary W. Baughman

Title: Director, HMWMD

STATE OF COLORADO)
) ss:
COUNTY OF ~~ADAMS~~ DENVER)

The foregoing instrument was acknowledged before me this 11 day of DECEMBER, 2006 by GARY BAUGHMAN on behalf of the Colorado Department of Public Health and Environment.

Claudette M. Ferris
Notary Public

4300 Cherry Creek Dr So
Address

Denver CO 80246

My commission expires: October 21, 2007

Attachment A

A tract of land situate in the County of Adams, State of Colorado, Sections 17 and 18, Township 3 South, Range 67 West of the 6th P.M., more particularly described as follows:

Beginning at a point on the Southerly line of said Section 17, a distance of 20.00 feet Westerly from the Southeast corner of the W½ W½ SW¼ of said Section 17;

thence along said Southerly line, bearing South 89° 50' 54" West, a distance of 326.55 feet to a point which is 312.27 feet Easterly from the Southwest corner of said Section 17;

thence along a line bearing North 0° 23' 07" West, a distance of 201.27 feet;

thence along a line bearing South 89° 36' 53" West, a distance of 600.00 feet;

thence along a line bearing North 0° 18' 17" West, a distance of 96.54 feet;

thence along a line bearing North 62° 43' 23" West, a distance of 81.44 feet;

thence along a line bearing South 84° 48' 31" West, a distance of 470.20 feet;

thence along a line bearing North 60° 55' 35" West, a distance of 280.38 feet;

thence along a line bearing North 33° 38' 41" West, a distance of 120.04 feet;

thence along a line bearing North 17° 15' 47" West, a distance of 177.03 feet;

thence along a line bearing North 89° 51' 05" West, a distance of 129.37 feet to a point on the Westerly line of E½ SE¼ of said Section 18, which said point is a distance of 703.84 feet from the Southwest corner of said E½ SE¼ of Section 18;

thence along said Westerly line, bearing North 0° 08' 55" East, a distance of 1561.52 feet to a point on the Southeasterly line of the Rock Island Railroad Right of Way;

thence along said Southeasterly Right of Way line, bearing South 53° 23' 46" East, a distance 2441.53 feet to a point on the Westerly line of Ivy Street, which said point is 20.00 feet West of the Easterly line of the W½ W½ SW¼ of said Section 17;

thence along said Westerly line of Ivy Street, bearing South 0° 06' 34" West, a distance of 798.94 feet to the point of beginning, containing 56.733 acres, more or less

EXCEPT any portion thereof conveyed to the City of Commerce City by Deed recorded October 29, 1975, in Book 2026 at Page 267 to wit:

A tract of land located in the County of Adams, State of Colorado, Section 17, Township 3 South, Range 67 West of the 6th P.M., more particularly described as follows:

Beginning at a point on the Southerly line of said Section 17, a distance of 20 feet Westerly from the Southeast corner of the West ½ West ½ Southwest ¼ of said Section 17;

thence South 89° 50' 54" West, a distance of 15 feet;

thence North 00° 06' 34" West, a distance of 810.12 feet to the Southeasterly right-of-way line of the Rock Island Railroad;

thence along said Southeasterly right-of-way line, South 53° 23' 46" East, a distance of 18.68 feet;

thence South 00° 06' 34" East, a distance of 798.94 feet to the point of beginning containing 0.277 acre, more or less.